

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI**

**मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON’BLE SHRI MANU KUMAR GIRI, JM**

1. आयकरअपील स/ ITA No.695/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2011-12)
&
2. आयकरअपील स/ ITA No.696/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2012-13)
&
3. आयकरअपील स/ ITA No.697/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2013-14)
&
4. आयकरअपील स/ ITA No.698/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2014-15)
&
5. आयकरअपील स/ ITA No.699/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
6. आयकरअपील स/ ITA No.700/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2016-17)
&
7. आयकरअपील स/ ITA No.701/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)
&
8. आयकरअपील स/ ITA No.702/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2018-19)

DCIT Central Circle-2(1) Chennai.	बन/ Vs.	Shri C. Vijayabaskar #14/28-1, Sowrastra Street, Illupur, Pudukottai-622 102.
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स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ACPPV-4888-A		
(अपीलार्थी/ Assessee)	:	(प्रत्यर्थी / Respondent)

&

9.आयकरअपील सं. / ITA No.589/Chny/2023
(निर्धारणवर्ष / **Assessment Year: 2016-17**)

&

10.आयकरअपील सं. / ITA No.590/Chny/2023
(निर्धारणवर्ष / **Assessment Year: 2017-18**)

&

11.आयकरअपील सं. / ITA No.591/Chny/2023
(निर्धारणवर्ष / **Assessment Year: 2018-19**)

Dr. C. Vijayabaskar #14/28-1, Sowrastra Street, Illupur Pudukottai-622 102.	बनाम/ Vs.	DCIT Central Circle-2(1), Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ACPPV-4888-A		
(अपीलार्थी/ Assessee)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Assessee by	:	S/Shri Nithyaesh Natraj, Vaibav R. Venkatesh & Anirudh A. Sriram (Advocates)-Ld. ARs
प्रत्यर्थीकीओरसे/ Revenue by	:	Shri A.P. Srinivas (Sr. Standing Counsel for department)- Ld. Sr. Counsel

सुनवाईकीतारीख/ Date of Hearings	:	20-11-2024 & 27-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	28-02-2025

आदेश / ORDER

Per BENCH:

1.1 The revenue is in further appeal for Assessment Years (AY) 2011-12 to 2018-19 whereas the assessee is in further appeal for AYs 2016-17 to 2018-19. These appeals have common issues and the same arises out of a common order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 31.03.2023 in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 153A & 153C of the Act on 27.09.2021. The facts as well as issues are

admittedly identical in all these years. For the purpose of adjudication, AY 2011-12 has been taken to be the lead year.

1.2 The grounds raised by the revenue for AY 2011-12 read as under: -

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The Ld.CIT(A) erred in restricting the disallowance of quarry expenses of Rs.1,12,04,385/- made in the assessment to 30% of such expenses.

2.1 The Ld.CIT(A) failed to appreciate that though the quarry licences were in the name of S.A. Subbiah and Shri. B. Kubendran, it was established that they were persons of no means. The assessee had also not produced any evidence substantiating expenses for quarrying.

2.2 The Ld.CIT(A) failed to appreciate that the assessee submitted that the rough stones were received from the quarry license holders by M/s Rasi blue metals, to the extent of value of expenditure incurred including for provision of facilities to the license holders. In such a scenario, there must be a clear bifurcation of quarry excavation expenses and the valuation of rough stone to justify the incurring of the quarry expenses, but the assessee failed to submit the same.

2.3 The Ld. CIT(A) failed to appreciate that the assessee was unable to produce any verifiable accounts for the purchase of rough stones from quarry license holders to substantiate the claim of quarry expenses incurred. The explanation for not maintaining stock books and purchase books was not accepted by the assessing officer as the assessee is required by law to maintain correct accounts, with all evidences in support of expenses claimed.

2.4 Having observed that the assessee failed to prove the correctness of the quantum of quarry expenses debited in the books of accounts of M/s. Rasi Blue Metals, the CIT(A) ought to have confirmed the disallowance of entire quarry expenses made by the assessing officer.

3.The Ld.CIT(A) erred in deleting the addition made towards unaccounted sale of blue metals amounting to Rs.12,82,67,697/- with a direction to recalculate the unaccounted sales based on the excess quantity of excavation of rough stones quantified by RDO order and to treat 40% GP of such unaccounted sales as undisclosed income of the assessee.

3.1 The Ld. CIT(A) failed to appreciate that in the absence of maintenance of proper records by the assessee like stock book, purchase register etc, the department made reference to the valuation cell to quantify the actual quantity of rough stone excavated from both quarries and the Departmental Valuation officer used scientific method i.e Aerial Photogrammetric method to arrive the quantity excavated from both quarries. The Ld. CIT(A) erred in relying on Inspection report by the State Government authorities in respect of quarry land under the license of Shri. S.A. Subbiah.

3.2 The Ld. CIT(A) erred in directing to adopt gross profit embedded in the unaccounted sales recalculated in the manner discussed in the order, worked out 40% of such unaccounted sales as undisclosed income of the assessee, without appreciating that the assessee had claimed entire excavation expenses already in the books of accounts and hence, gross profit theory was not applicable to the facts of the case.

4. The Ld.CIT(A) erred in deleting the entire addition made towards disallowance of quarry expenses and unaccounted sale of blue metals holding that the additions were

made without reference to incriminating materials in respect of the unabated assessments.

4.1. The Id CIT(A) failed to appreciate that only on the basis of search, it was established by the assessing officer that the quarry license holders were mere name lenders having no means and the entire quarrying operations were controlled by assessee's Proprietary concern M/s. Rasi Blue metals and quarrying expenses were claimed in the books of accounts of M/s. Rasi Blue Metals.

4.2 The Id CIT(A) failed to appreciate that only on the basis of search, the reference was made to the valuation cell to ascertain the quantity of materials excavated over the years. Further, even in the Revenue Divisional officer (State Govt)'s order itself the excess volume of minerals quarried and taken without permission was quantified at stones 1,02,241.39 cu. m and gravel of 71,912.62 cu.m. This excess excavation from quarry representing the unaccounted closing stock found during the search can be considered as incriminating evidence in nature.

5. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

1.3 The Ld. Sr. Counsel for revenue, Shri A.P. Srinivas, advanced elaborate arguments to support the conclusions of Ld. AO in the assessment order. Reference has been made to various case laws to assail the relief granted in the impugned order. The Ld. AR also advanced elaborate arguments and supported the findings given in impugned order. Reference has similarly been made to various case laws. The jurisdiction of Ld. AO has also been challenged on legal grounds. The written submissions have also been filed which have duly been considered while adjudicating the appeals. The attention has been drawn to various documents as placed in the paper-book. The case was put up for clarification from time to time which was duly been responded to by both the sides. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

Proceedings before lower Authorities

2.1 Upon perusal of impugned order, it could be seen that the assessee being resident individual is stated to be engaged in production and sale of blue metals under proprietorship concern by the name M/s

Rasi Blue Metals ('RBM' in short). The firm was based at Puddukottai District and stated to be engaged in production of blue metal of various sizes which is carved out of rough stones extracted from the mines. The assessee's other family members are stated to be engaged in their respective individual activities. The assessee acted at Member of Tamilnadu State Legislative Assembly.

2.2 Pursuant to search action on assessee group on 07.04.2017, separate assessments were framed against the assessee for various assessment years. The assessment for AYs 2012-13 to 2014-15 was framed u/s 143(3) r.w.s. 153A on 27.12.2019 whereas the assessments were similarly framed for AYs 2011-12 and 2015-16 to 2018-19 vide order dated 27.09.2021. The case was centralized by appropriate authority vide order dated 18.09.2017.

2.3 The assessee preferred application before Hon'ble Income Tax Settlement Commission (ITSC) for AYs 2011-12 to 2018-19 which were rejected on 09.01.2020 on the ground that the assessee did not make full and true disclosure of the income. Another application was filed for AYs 2011-12, 2015-16 to 2018-19 which was also rejected on 24.12.2020 for the same reason. For AY 2015-16, the assessee preferred application for revision u/s 264 wherein the assessment framed on 27.12.2019 was set aside and Ld. AO was directed to pass fresh assessment order after providing copies of seized material to the assessee and after providing him the opportunity to cross-examine the witnesses. Subsequently, the assessee preferred another application before Interim Board for Settlement-2, New Delhi on 27.09.2021 for AYs 2011-12 and 2015-16 to 2018-19. Pending disposal of the same, the assessee preferred Writ Petition before Hon'ble High Court of Madras on

20.10.2022 praying for quashing of notices relating to recovery of tax demand. However, the assessee sought leave to withdraw the writ petitions and stated that he would not prosecute the settlement applications. The Hon'ble Court disposed off Writ Petition vide order dated 22.12.2022 and directed Ld. CIT(A) to dispose-off the pending appeals for AYs 2011-12 to 2018-19 expeditiously and in any event on or before 31.03.2023. The Hon'ble Court also held that the grounds raised in the appeals that the assessment orders were passed during the pendency of settlement application would not be available to the assessee. Pursuant to the same, hearing notices were issued to the assessee during appellate proceedings from time to time and a common first appellate order was passed on 31.03.2023 which is in further appeal before us.

2.4 The additions made by Ld. AO for various years have been tabulated by Ld. CIT(A) at para-6 of the impugned order. The same, for ease of reference, is again extracted as under: -

Particulars of Addition	AY 2011-12	AY 2012-13	AY 2013-14	AY 2014-15
Disallowance of quarry expenses	1,12,04,385	1,75,20,641	3,88,84,862	6,92,87,294
Addition of unaccounted sales of blue metal	12,82,67,697	6,62,75,129	-	-
Particulars of Addition	AY 2015-16	AY 2016-17	AY 2017-18	AY 2018-19
Disallowance of quarry expenses	13,11,59,800	17,77,24,564	18,88,07,699	2,93,95,700
Addition of unaccounted sales of blue metal	103,12,65,215	-	33,34,12,176	-
Undisclosed receipts from M/s. SRS Mining	49,40,00,000	4,20,00,000	31,85,75,765	
Undisclosed receipts from gutkha	50,00,000	1,48,00,000	42,00,000	-

manufacturer				
Unaccounted closing stock	-	-	9,44,08,136	-
Undisclosed receipts as per material seized from Shri J. Srinivasan	-	-	20,75,91,500	-
Undisclosed expenses as per material seized from D. Ajay Kumar	-	-	30,90,000	-
Unexplained cash at the residences in Chennai and Illupur	-	-	-	25,08,350
Unexplained cash mobilized for RK Nagar Bye- Election.	-	-	-	15,46,08,000

It could be seen that additions are on account of – (i) Disallowance of quarry expenses; (ii) Addition of unaccounted sales of blue metal; (iii) Undisclosed receipts from SRS mining; (iv) Undisclosed receipts from gutkha manufacturer; (v) Addition of Unaccounted closing stock; (vi) Addition of undisclosed receipt as per material seized from Shri J. Srinivasan; (vii) Addition of undisclosed expenses as per material seized from Shri D. Ajay Kumar; (viii) Addition of unexplained cash as found from assessee's residence at Chennai and Illupur; (ix) Unexplained cash mobilized for RK Nagar bye-elections.

2.5 The facts of each of the issues have elaborately been captured in the impugned order and findings have been rendered on each of the issues. We have duly considered the findings rendered by first appellate authority and our adjudication would be as given in succeeding paragraphs.

3. Disallowance of quarry expenses

3.1 It transpired that M/s Rasi Blue Metal ('RBM' in short) was engaged in production of blue metals of various sizes. The rough stones for

production thereof were stated to be supplied from rough stone quarries which were held in the names of two persons i.e., Shri SA Subbaiah and Shri B. Kubendran. The assessee owned 4.92 Hectares of land at Melur Village Kulathur Taluk, Pudukottai which was given on lease to Shri B. Kubendran for the purpose of quarrying by said person. Similarly, the assessee and Shri B. Kubendran owned 3.84 Hectares and 1.06 Hectares of quarry land at Thrivengalaivasal which was given on lease to Shri SA Subbaiah for quarrying by said person. However, Ld. AO, based on recorded statements, concluded that though Shri SA Subbaiah and Shri B. Kubendran were having licenses to carry out quarrying operations, however, they assisted the assessee in quarry business by being mere lessees of the quarries. The operational control of the quarries was with Shri V. Palanisamy (GM of RBM) who was a key person to look after all the business affairs of the assessee and his family members. This inference was on the basis of statements made by Shri SA Subbaiah and Shri B. Kubendran as recorded during the course of search operation.

3.2 Upon perusal of Books of accounts of M/s RBM, it was noted by Ld. AO that quarrying expenses and crushing expenses were debited in the books of the assessee. The quarry expenses represent expenses incurred for excavating rough stones from the quarries whereas crushing expenses represent expenses incurred for crushing rough stone into blue metal. Since quarry operation was not the business activity of RBM as the licenses were obtained in the name of two persons, Ld. AO proceeded to disallow the quarry expenses as claimed by M/s RBM. The assessee stated that M/s RBM had a business arrangement with the quarry license holders as per which the said license holders carried out

the quarrying of rough stones by using the infrastructure and facilities of M/s RBM on the quarry land which incidentally belonged to the assessee. It was explained that rough stones were received by M/s RBM from quarry license holders to the extent of value of expenditure incurred by M/s RBM for providing the said infrastructure and other facilities to the quarry license holders. Further, no expenditure was debited in the books of M/s RBM towards purchase of rough stones from the quarry license holders and the value of the said purchases was reflected in the books of M/s RBM in the form of expenditure incurred towards quarrying including provision of facilities. The overall expenditure of M/s RBM would include expenditure incurred on crushing as well as expenditure incurred on quarrying rough stone for and on behalf of quarry license holders. It was also stated that no separate books were maintained in respect of quarrying operations. In the absence of verifiable accounts for purchase of rough stones from quarry license holders, Ld. AO disallowed quarry expenses as claimed by the assessee during AYs 2011-12 to 2018-19. Aggrieved, the assessee preferred first appeal against the same wherein the assessee assailed the said disallowance by way of elaborate written submissions. The assessee also pointed out that the disallowance would result into unreasonable gross profit margins which would not be normal in this line of business.

3.3 The Ld. CIT(A) noted that both the persons were holding quarry licenses issued by the state government and seigniorage fees was paid by both of them to government in respect of material excavated from the quarries. Both the persons filed return of income for AY 2015-16 u/s 139 before the date of search disclosing income from business in respect of the said quarrying activities being carried out by them. They also filed

return of income disclosing such business income in the return of income filed in response to notices issued u/s 153C issued to them after search. Therefore, it could not be said that both the persons were not carrying out quarrying activities. At the same time, the business arrangement entered into by the assessee with the quarry license holders was evidenced by their respective statements. The same was also evident by the fact that the assessee did not debit any expenditure towards cost of purchase of rough stones in the Profit & Loss Account. The quarry expenses were incurred by the assessee during the course of business of production of blue metal only in order to procure the raw material for the said business from the quarries. Therefore, the quarry expenses as incurred by the assessee under the said business arrangement with the quarry license holders represent the cost of purchase of rough stones which is used as raw material for the assessee's business of production of blue metal. Therefore, the said expenditure was to be regarded as expenditure incurred wholly and exclusively for the purpose of assessee's business. Accordingly, the deduction thereof could not be denied to the assessee. However, the assessee did not furnish evidences to establish the genuineness of the claim of quarry expenses. The assessee failed to prove the correctness of quantum of quarry expenses as debited in the Profit & Loss Account. Considering the same, Ld. CIT(A) estimated disallowance of 30% of quarry expenses and partly allowed the grounds as raised by the assessee. Aggrieved, the revenue is in further appeal before us.

Our Adjudication on this issue

4. From the facts, the pertinent facts that emerges are that the though the assessee own the quarry land, the licenses to carry out quarrying

operations were held by Shri SA Subbaiah and Shri B. Kubendran. Both these persons paid seigniorage fees to the government in respect of material excavated from the quarries. Both the persons filed return of income for AY 2015-16 u/s 139 before the date of search disclosing income from business in respect of the said quarrying activities being carried out by them. They also filed return of income disclosing such business income in the return of income filed in response to notices issued u/s 153C to them after search. Therefore, the conclusion that both the persons were not carrying out quarrying activities, could not be accepted. It could also be seen that the assessee entered into a business arrangement with these two persons which allow them to use infrastructural facilities of the assessee against supply of raw material to the assessee. It is quite evident that the assessee has not debited any expenditure towards cost of purchase of rough stones in the Profit & Loss Account. Without purchase of basic raw material, no production could have been carried out by the assessee. Therefore, the quarrying expenses would represent cost of purchase of rough stones by the assessee. These rough stones are further converted into blue metal which generate revenue for the assessee. Therefore, the quarry expenses would be nothing but expenditure incurred during the course of assessee's business to procure raw material. Accordingly, the deduction thereof could not be denied to the assessee. In our considered opinion, this expenditure could not be substantiated fully by the assessee. Therefore, the disallowance of 30% is good enough to take care of the revenue leakage. It is another fact that if quarry expenses are disallowed in *toto*, the same would result into abnormal profits for the assessee which is not possible in this line of business. Accordingly, the

adjudication of Ld. CIT(A) could not be faulted with. We concur with the same. The grounds raised by the revenue, for all the years, stand dismissed accordingly.

5. Undisclosed Sale of Blue Metal

5.1 The Ld. AO alleged that the assessee made unaccounted sales of blue metal. The same stem from the allegation that excess excavation was done from the mines. It was inferred by Ld. AO that rough stones as excavated from the quarries were captively taken and utilized by M/s RBM for production of blue metal. Therefore, any excess undisclosed excavation of rough stone and associated gravel (malaimann) from the said quarries could be considered to have been taken by M/s RBM and corresponding sales of blue metal was to be treated as undisclosed sales of M/s RBM.

5.2 In order to ascertain the quantum of excess quarrying of rough stone and malaimann from the quarries, a reference was made to valuation cell by investigation wing. In the valuation report dated 02.08.2017, it was stated that inspection was carried out at the quarry land by using Aerial Photogrammetric Method using unmanned Aerial Vehicles (drones). The Ld. AO quantified excess quarrying from quarries under the license of Shri SA Subbaiah. Based on valuation report, the quantum (volume) of excavation was arrived at 22,76,306 cubic meters of rough stones and 2,75,562 cubic meters of gravel. The same was compared with the seigniorage fees paid by Shri SA Subbaiah to District Collector. As per this fee data, the assessee quarried 29,700 cubic meters of rough stones during the 5-year period from 16.08.2007 to 15.08.2012 and 80,400 cubic meters of rough stone from 04.10.2013 to 29.05.2017. There was no quarry operation between 15.08.2012 to

04.10.2013. The value so ascertained as per Drone Method was apportioned to various years as per seigniorage fee paid by Shri SA Subbaiah and the same was quantified as under: -

FY	Cost of Rough Stones	Rough Stone quarried (as per seigniorage fee paid)	Volume of rough stone actually quarried (allocated in pro-rata ratio)	Value of Rough Stone (Volume x Rate)	Sales As per Return of Income of Shri SA Subbaiah	Undisclosed Sales
2010-11	170	7500	182396	3,10,07,292	-	3,10,07,292
2011-12	190	4500	109438	2,07,93,125	-	2,07,93,125
2012-13	205	1200	29183	59,82,583	-	59,82,583
2013-14	225	2400	58367	1,31,32,500	-	1,31,32,500
2014-15	252	51600	1254883	31,62,30,600	27,80,430	31,34,50,170
2015-16	283	1800	43775	1,23,88,325	35,70,600	88,17,725
2016-17	325	24600	598258	19,44,33,958	35,26,890	19,09,07,068
TOTAL		93600	2276300	59,39,68,383	98,77,920	58,40,90,463

Similarly, the value of undisclosed sale of malaimann in his hands was determined as under: -

FY	Qty. of rough stones (as per records of AD, M&G)	Volume of Malaimann actually quarried as per Drone survey (allocated pro-rata ratio)	Cost of Malaimann (market price)	Value of Malaimann
2008-09	6090	101707	160	16273189
2009-10	10410	173855	180	31293823
TOTAL	16500	275562		47567011

The value of excess stone for Shri SA Subbaiah was thus quantified as Rs.63.16 Crores (Rs.58.40 Crores + Rs.4.75 Crores) for FYs 2008-09 to 2016-17. Similar estimation was made for quarries under the license of Shri B. Kubendran. The value of excess stone in the hands of Shri B. Kubendran was quantified at Rs.3.85 Crores.

5.3 Armed with these computations, Ld. AO proceeded to determine the value of undisclosed sales of blue metal in the hands of the assessee since excess stone so excavated would be captively utilized by the assessee in production of blue metal. The blue metal would be

produced in different sizes. As per assessee's statement, the percentage breakup of rough stone which is crushed into blue metals of various sizes would be as under: -

Size of Blue Metal	40mm	20mm	12mm	6mm	Dust
Break-up percentage	40%	25%	10%	5%	20%

The year-wise selling price of each of the category of stone was ascertained by Ld. AO. Finally, the sales value of blue metal produced out of alleged 22,76,300 cubic meters of rough stones was computed by Ld. AO for each of the category with respect to quarry under the license of Shri SA Subbaiah. Similar sales value was computed for 52,528 cubic meters of rough stone from quarries under license of Shri B. Kubendran.

5.4 The quantum of undisclosed sales was finally computed by Ld. AO in assessee's hands as under: -

FY	Rough stone from quarry site of S.A. Subbaiah	Sale value of blue metal processed from rough stone of S.A. Subbaiah's Quarry	Rough stone from quarry site of B. Kubendran	Sale value of blue metal processed from rough stone of B. Kubendran's Quarry
2010-11	182396	14,91,08,730	-	-
2011-12	109438	9,38,43,045	-	-
2012-13	29183	2,64,83,573	-	-
2013-14	58367	5,76,37,413	-	-
2014-15	1254883	1,23,91,96,963	-	-
2015-16	43775	4,32,27,813	26486	2,61,54,925
2016-17	598258	59,07,79,775	26042	2,57,16,475
TOTAL	22,76,300	2,20,02,77,350	52,528	5,18,71,400

FY	AY	Total sale of Blue metal	Sale as per return of income of C. Vijay Baskar Prop. M/s. Rasi Blue Metals)	Undisclosed sale of Blue Metal
2010-11	2011-12	14,91,08,730	2,08,41,033	12,82,67,697
2011-12	2012-13	9,38,43,085	2,75,67,956	6,62,75,129
2012-13	2013-14	2,64,83,573	5,97,05,134	-3,32,21,561
2013-14	2014-15	5,76,37,413	10,55,25,105	-4,78,87,692
2014-15	2015-16	1,23,91,96,963	20,79,31,748	1,03,12,65,215
2015-16	2016-17	6,93,82,738	28,28,60,683	-21,34,77,945
2016-17	2017-18	61,64,96,250	28,30,84,074	33,34,12,176

The negative figures for FYs 2012-13, 2013-14 and 2015-16 were ignored by Ld. AO whereas the positive figures for FYs 2010-11, 2011-12, 2014-15 and 2016-17 were added as undisclosed sales of the assessee for various assessment years. To support the conclusion of excess excavation, Ld. AO referred to the statements made by Shri Iftikhar Ahmed, Geologist and Shri R. Gopalakrishnan, DVO.

5.5 The assessee defended its stand and stated that excess quarrying, if any, was not liable to be assessed in his hands. There was no material with regard to undisclosed sale of blue metal. The methodology adopted by Ld. AO was based on presumptions and presumptive calculations. However, Ld. AO held that the two license-holders had no means to carry out quarrying operations on their own. It was to be considered that entire material as extracted from the quarries was in the control and at the disposal of the assessee. The Ld. AO further held that no stock-book was maintained by the assessee for quarrying operations. The computation made was on scientific basis. Shri Iftikhar Ahmed, qualified mining planner, in statement u/s 131, stated that the quarry sites in Puddukottai District region where the quarries were located was almost similar and landscape was free of undulation. He also stated that there was least possibility of gravel formation below the fractured and fissure zone. The assessee was afforded cross-examination of Shri Iftikhar Ahmed on 24.11.2020. It was stated by Shri Iftikhar Ahmed that though he is not an expert in photogrammetric methodology, he could state with his knowledge and experience that the quantity of material excavated could not be ascertained unless a Geochemistry investigation was carried out at the mining site. As regard the quantity of excavation, he stated that the quality assessment of digital elevation modeling may be

somewhere appropriate only when all the excavated portions were uniform in size and similar in composition. He stated that since the rough stones had varied sizes of 2 mm to 2m with irregular shapes, there was a possibility of present of more voids inside the heaps which may not match with surface images taken from unmanned aerial photography. He also stated that errors of estimation were bound to occur in this methodology due to the said reasons.

5.6 The assessee was also afforded opportunity to cross-examine Shri R. Gopalakrishnan, DVO, Valuation Cell. He stated that quantum of rough stone excavated was estimated in the inspection reports by taking end-to-end measurements on the basis of visible earth composition at the excavated sites. The estimate was stated to be near accurate. However, he also stated that the quality of the earth that had been excavated in terms of blue metal, hard stone, rough stone, weathered rock, broken rock, waste etc. could not be considered as accurately determined in an already excavated mine. Similar cross-examination was carried out with Shri P. Manikandan, one of the directors of M/s Gridline Surveys and Geospatial Private Ltd. on 24.12.2019. He, inter-alia, stated that the quality of minerals below the overburden from one end to the other end could not be said to be uniform. It was also stated that the quantity and quality of excavated material over the years in an already excavated quarry could not be ascertained.

5.7 Considering all the above facts, Ld. AO held that the above statements validate the accuracy of the quantum as well as quality of minerals as excavated. The scientific nature and correctness of the methodology adopted in ascertaining the quantum of rough stones and gravel quarried was validated, accurate and beyond doubt. Accordingly,

the assessee's objections were rejected and the aforesaid estimated income was added in the hands of the assessee for various years. Aggrieved, the assessee assailed the impugned additions in first appeal. The assessee filed elaborate written submissions assailing the impugned additions which have been extracted in impugned order in Para-60 of the impugned order. The adjudication of Ld. CIT(A) is contained in para-61 onwards.

6. Adjudication of Ld. CIT(A)

6.1 The Ld. CIT(A) noted that post-search proceedings, the investigating office made a reference to valuation cell of the Income Tax Department for ascertaining the extent of excavation of minerals from the quarries in respect of which the license for quarrying was held by Shri SA Subbaiah and Shri B Kubendran. For the said purpose, the DVO engaged the services of M/s Gridline Surveys and Geospatial Pvt. Ltd for ascertaining the volume of excavation made from the quarries using the Ariel Photogrammetric Methodology using drones. Based on the said methodology, the DVO furnished separate inspection reports in respect of the quarries licensed to Shri SA Subbaiah and Shri B Kubendran wherein the DVO made quantification of the volume of excavation of rough stone and malaimann from the said quarries from the date of commencement of the quarrying by the said persons to the date of inspection on 29.05.2017. Since the entire quantity of rough stone excavated from the said quarries was supplied to M/s RBM, the quantum of production of blue metal of various sizes by crushing the said quantity of rough stone received from the quarries was determined by Ld. AO on the basis of the standard yield from production as stated by the assessee in his sworn statement recorded on 03.08.2017. The actual

sales of blue metal by the assessee for various assessment years was worked out by Ld. AO by taking into consideration the quantum of blue metal production so computed and the market value prevailing in the relevant assessment years for various sizes of blue metal. After comparing the year-wise sales of blue metal determined in the said manner with the sales disclosed by the assessee in the returns of income for the relevant assessment years, AO worked out the extent of unaccounted sales of blue metal allegedly made by the assessee. On the basis of such working, Ld. AO arrived at unaccounted sales of blue metal for AYs 2011-12, 2012-13, 2015-16 and 2017-18 and added the same to the income of the assessee for these years. As against this, the main objection of the assessee was regarding the assumption made by the DVO that the entire volume of material excavated from the quarries, determined on the basis of the Ariel Photogrammetric Methodology, was represented only by 'rough stone' which could be suitable for production of blue metal barring the volume of material represented by the waste earth i.e., malaimann. The assessee contended that only the total volume of the material excavated from the quarries could be determined by the methodology used by the DVO, however, the quality and quantity of various materials excavated from the quarries could not be determined by the said methodology as the same would be dependent on the geological composition of the said quarries. The assessee also contended that the material excavated from the quarries consist of weathered stone, soft stone, fractured stone, loose stone, white stone etc apart from rough stone and the materials other than 'rough stone' could not be used as raw material for production of blue metal. The assessee accordingly contended that the excess quantity of rough stone

excavated from the quarries and the corresponding excess quantity of production of blue metal and sale of blue metal by the assessee as determined by the AO in the relevant assessment orders on the basis of such inspection report of the DVO was erroneous and unsustainable.

6.2 Upon perusal of relevant inspection reports of the DVO, Ld. CIT(A) concurred that DVO considered that the entire volume of material excavated from the quarries would be represented by 'rough stone' and 'malaimann'. There was no dispute regarding the volume of malaimann excavated from the quarries as determined in the inspection reports. In the inspection reports, Ld. DVO made an erroneous assumption that only 'rough stone' which is suitable for production of blue metal was obtained on excavation of the quarries. The AO adopted the volume of rough stone as determined in the DVO's report for the purpose of working out the excess quantity of excavation of rough stone and corresponding excess quantity of production of blue metal by the assessee, leading to computation of unaccounted sales of blue metal in the hands of the assessee. The AO made reference to the answer given by Shri Ifthikar Ahmed, a Geologist and a qualified Mining Planner, to Q.No.15 of his statement u/s 131 dated 19.06.2017 to infer that there was little possibility of formation of hollow rock at the relevant quarry sites and to conclude that the computation of volume of rough stone excavated from the quarries made by the DVO in the inspection reports was scientific and accurate. However, as rightly contended by the assessee, the inspection reports of the DVO suffer from the erroneous presumption that the entire volume of material excavated from the quarries (other than malaimann) was that of 'rough stone' only which would be suitable for production of blue metal. The fact that the said

presumption made by the DVO was erroneous was also apparent from the answers given by the DVO, Shri Ifthikar Ahmed (Geologist) and Shri Manikandan, the Director of M/s Gridlines Survey and Geospatial Pvt. Ltd in the course of their examination / cross-examination by the assessee during the course of the assessment proceedings on 27.11.2020, 24.11.2020 and 24.12.2019 respectively.

6.3 On perusal of the statement of Shri Ifthikar Ahmed dated 24.11.2020 in the course of cross-examination by the assessee, he clarified therein that his answer to Q.No.15 of statement dated 19.06.2017 (quoted by the AO in the assessment order) was merely a rough estimate by correlating the general data available with the Department of Geology and Mining, Chennai with regard to quarry sites situated in Puddukottai district. He clarified that the said data available with the Mining Department was based on random interval sample testing at various places in Puddukottai district and that variations were bound to occur at different quarry sites as the said data was not site-specific. He stated that he never carried out any detailed scientific examination to ascertain different layers of minerals available in the quarry sites of Shri SA Subbaiah and Shri B Kubendran. With regard to the query by the assessee as to whether the Ariel Photogrammetric Method used by the DVO could bring out the quantity and quality of minerals/stones/rocks actually excavated over the years from the quarries, Shri Ifthikar Ahmed stated that the quality of material excavated could not be ascertained unless geochemistry investigation is carried out at the quarry site. As regards the quantity of excavation, he stated that the assessment of the same by digital elevation modeling may be somewhat appropriate only when all the excavated portions are uniform

in size and similar in composition. He stated that since rough stone had varied sizes of 2mm to 2m with irregular shapes, there were possibilities of presence of more voids inside the heaps which may not match with the surface relief taken from unmanned Aerial photography, due to which errors of estimation were bound to occur in the said methodology. It was therefore evident from the clarifications furnished by the said technical expert in geological matters that the composition and quality of the stone excavated from the quarries could not be ascertained by the Aerial Photogrammetric Method and that the excavated material could not be considered to be similar in composition and uniform in size. It was also evident that the reliance placed by the AO on the answer to Q. No.15 of his statement dated 19.06.2017 to derive support regarding the scientific nature and correctness of the methodology adopted in the inspection report of the DVO for ascertaining the quantum of rough stone excavated from the quarries was erroneous.

6.4 It was further noted that DVO engaged the services of a private agency M/s Gridline Surveys and Geospatial Pvt. Ltd for the purpose of making survey of the quarry sites using Aerial Photogrammetric Methodology. Shri P Manikandan, Director of the said company, was cross-examined by the representatives of the assessee on 24.12.2019. During cross-examination, in his answer to Q.No.12, he clarified that the methodology adopted by them could only reasonably determine the extent of volume of material excavated in cubic meters and that it could not determine whether the entire material excavated barring the overburden was rough stone. He clarified that the exercise carried out by his company was restricted only to making a fair estimate of the excavated volume from the quarries and that it was not possible to

ascertain the quantum and quality of the excavated materials from a quarry which had already been subjected to excavation over the years. It was evident from the replies furnished by him during his cross-examination that the Aerial Photogrammetric Method could be used only for the purpose of ascertaining the overall volume of material excavated from the quarries and the same could not be applied for ascertaining the material-wise composition which was embedded in the said volume of excavation. Therefore, Ld. AO drew an erroneous conclusion based on the said statement that his statement had validated the accuracy of the quantum and quality of the materials excavated as determined in the DVO's report though the replies given by Shri P Manikandan were clearly contrary to the said conclusion.

6.5 Further, upon perusal of the cross-examination statement dated 27.11.2020 of Shri Gopalakrishnan, DVO, it could be seen that he clearly admitted in his answer to Q.No.6 therein that though the assessment of the total volume of material excavated from the quarries made in his report based on the Aerial Photogrammetric Method could be said to be near accurate, the same could not be said regarding the quality of the material excavated. The DVO stated that the quality of material excavated such as blue metal, hard stone, rough stone, weathered rock, broken rock, waste etc. could not be accurately determined in an already excavated mine. It was unambiguously clear from his reply that the methodology adopted by him with the assistance of a private agency could only result in determination of the 'total volume of the material' excavated from the quarries and not the 'composition of such material'. On the basis of his statement, Ld. AO drew an erroneous conclusion that his statement had validated the accuracy of the quantum and quality of

the materials excavated as determined in the DVO's report though the replies given by the DVO were clearly contrary to the said conclusion.

6.6 From the replies of above-mentioned technical experts, it was clear that the material excavated from the quarries was composed of several mineral elements such as weathered rock, soft stone, fractured rock, rough stone, etc., and it was wrong to consider that the entire volume of the material excavated from the quarries was comprised of 'rough stone' (suitable for production of blue metal) only. The inspection reports of the DVO wherein the entire volume of material excavated from the quarries, excluding the volume of malaimann, had been treated as the volume of rough stone were clearly erroneous for the said reasons. The minerals excavated from the quarries other than "rough stone" was not suitable for production of blue metal and consequently, the volume of such minerals (other than rough stone) comprised in the total volume of minerals excavated could not be taken into consideration for the purpose of working out the actual production and sale of blue metal by the assessee. Therefore, it was held that the working of actual production and sales of blue metal as made by Ld. AO was based on the erroneous determination of the volume of rough stone excavated from the quarries in the inspection reports of the DVO. Therefore, the determination of unaccounted sales of blue metal by comparing the actual sales so worked out with the sales disclosed in the returns of income of the assessee was erroneous and unsustainable on facts.

6.7 The Ld. CIT(A) then referred to the order of the RDO, Iluppur dated 16.08.2019 passed in the case of Shri SA Subbaiah which could be considered as appropriate basis for quantification of the excess volume of rough stone excavated and taken out from the quarries for the

purpose of production of blue metal by the assessee. The said order was passed u/s 36(A) of Tamil Nadu Minor Minerals Concession Rules, 1959 imposing penalty on Shri SA Subbaiah for taking out minerals from the quarry without prior permission and without payment of seigniorage fee. The relevant proceedings by the RDO were initiated on the basis of the reference made by the Income Tax Department to the Puddukottai District Administration requesting it to take necessary action under the law with regard to the excess quarrying by Shri SA Subbaiah. The Income Tax Department forwarded the Inspection report of the DVO along with the said reference and informed the District Collector that 22,76,306 cubic meter of rough stone and 2,75,562 cubic meter of gravel sand (malaimann) was excavated from the quarry of Shri SA Subbaiah, whereas the said person had paid seigniorage fee in respect of 1,10,100 cubic meter of rough stone only during the period from the commencement of quarry operations in FY 2008-09 to May 2017. It was informed that the excess / undisclosed quantity of rough stone and gravel sand quarried from the mines amounted to 21,66,206 cubic meter and 2,75,562 cubic meters respectively. On the basis of the said information received from the Income Tax Department, the District Collector directed the RDO, Iluppur to take necessary action u/s 36 (A) of Tamil Nadu Minor Mineral Concession Rules after conducting the necessary enquiries and verification. Pursuant to same, the RDO requested the Assistant Director (Land Survey), Puddukottai District to constitute a five-member committee headed by Land Survey Inspector to carry out survey of the quarry land of Shri SA Subbaiah. Based on the land survey conducted by the said committee, the Assistant Director furnished his report dated 18.02.2019. The said report contained the

details of the minerals and gravel found stacked in the quarry land. Based on the said report, the RDO requested the Assistant Director (Geology & Mines), Pudukottai to calculate the measurements of the minerals stacked as stones and gravels in the quarry land of Shri SA Subbaiah. In response to it, the Assistant Director (Geology & Mines) furnished his report dated 05.07.2019. After taking into consideration the reports of the Assistant Director (Land Survey) and Assistant Director (Geology & Mines), the RDO arrived at the finding that 20,63,965 cubic meter of stones and 2,03,649 cubic meter of gravel was found stacked / dumped at the quarry site or nearby areas. The RDO compared the availability of the said material at the quarry site with the total volume of excavation of minerals from the quarries as per the report of the Income Tax Department and worked out the excess volume of minerals (Stone and gravel) quarried and taken out without permission, the details of which are as follows: -

Particulars	Stones (Cubic Meter)	Gravel (Cubic Meter)
Volume of minerals removed without permission as per the report of income tax department	21,66,206.00	2,75,562.00
Volume of minerals dumped on the leased / licensed spot /nearby it according to the report of Asst. Director (LSD) Pudukottai, / Tahsildar Illupur and Asst. Director (G&M) Pudukottai	20,63,964.61	2,03,649.38
Volume of minerals quarried and taken out without permission	1,02,241.39	71,912.62

Accordingly, RDO held that the excess quantity of black rough stone quarried and taken out without permission amounted to 1,02,241 cubic meters, which was valued at Rs.3.88 Crores at the rate of Rs.380/- per cubic meter. The RDO held that excess quantity of gravel quarried and taken out without permission amounted to 71,912 cubic meters. The

RDO imposed penalty on Shri SA Subbaiah for taking out the said excess quantity of black rough stone and excess quantity of gravel without payment of seigniorage fee in his order dated 16.08.2019. It was evident from careful examination of the RDO's order that the excess quantity of rough stone removed from the quarry of Shri SA Subbaiah amounted to 1,02,241 cubic meters and consequently, it was to be construed that the excess quantity of rough stone procured from the quarry of Shri SA Subbaiah and processed by the assessee for unaccounted production of blue metal was 1,02,241 cubic meters only as against 22,66,206 cubic meters considered by Ld. AO in the assessment order (total volume of rough stone excavated as per report of DVO of 22,76,300 cubic meter less 1,10,100 cubic meters for which seigniorage fee was paid by Shri SA Subbaiah).

6.8 It was further noted by Ld. CIT(A) that the said order of the RDO, Iluppur was brought to the notice of Ld. AO during the course of cross-examination of Shri R Gopalakrishnan, DVO on 27.11.2020. In the assessment order, the AO reproduced the reply given by the DVO to Q.No.8 of his cross-examination, wherein he was shown the said order dated 16.08.2019 of the RDO and he was requested to furnish his expert comments. In his reply to the said question, the DVO stated that the order of the RDO was a statutory order under the Mines Act and the Officer giving the report was vested with the authority to evaluate the quantum of earth excavated and to determine various factors concerning the excavated mines. It was to be observed that the RDO did not dispute the computation of total volume of excavation of minerals from the quarry of Shri SA Subbaiah as mentioned in the DVO's report. However, since most of the excavated volume of minerals (different varieties of stones

and gravel) were found to have been dumped / stacked at the quarry site and nearby areas, the RDO arrived at the quantum of such stones and gravel available at the quarry site and nearby areas and accordingly, worked out the quantum of stone and gravel taken out from the quarry site without permission and without payment of seigniorage fee. Since the stone excavated from the quarries comprised-off not only 'rough stone' which could be used for production of blue metal but also other varieties of stones such as weathered rock, fractured and fissured rocks, soft rocks, etc. which would not be suitable for production of blue metal, it could reasonably be inferred that the quantity of stones excavated from the quarry but found dumped / stacked at the quarry site and nearby places of 20,63,965 cubic meters represents such stone which was not suitable for production of blue metal. The Inspection report of the DVO was based on erroneous presumption that the entire quantity of stone excavated from the quarry was represented by 'rough stone' which would be suitable for production of blue metal. Based on the said erroneous presumption, the DVO determined the total quantity of hard rough stone excavated from the quarry of Shri SA Subbaiah at 22,76,300 cubic meters. The excess / undisclosed quantity of hard rough stone excavated from the said quarry was worked out by the AO at 22,66,200 cubic meters, after deducting the quantity of rough stone of 1,10,100 cubic meters for which Shri SA Subbaiah has paid the seigniorage fee from the total quantity of excavation of rough stone of 22,76,300 cubic meters. The entire quantity of such excess / undisclosed rough stone excavated from the quarry was considered by the AO to have been utilized by the assessee for making unaccounted production and sale of blue metal. However, as emerging from the discussion made in the

preceding paragraphs regarding the views expressed by Shri Gopalakrishnan, DVO, Shri Ifthikar Ahmed, Geologist and Shri P Manikandan, Director of the Private Agency which conducted the drone survey and the contents of the order of the RDO dated 16.08.2019 which was based on the survey done by the Land Survey and Mining & Geology Authorities, the entire quantity of stone excavated from the quarry would not constitute the 'rough stone' suitable for production of blue metal. Hence, it was required to be held that the excess / undisclosed quantity of 'rough stone' excavated from the quarry of Shri SA Subbaiah worked out by the AO at 22,66,200 cubic meters based on the erroneous presumption that the entire quantity of stone excavated from the quarry was represented by 'rough stone' alone was not sustainable. The consequential working made by Ld. AO to work out undisclosed sales of blue metal in the hands of the assessee was also not sustainable on facts.

6.9 Going by the order of RDO, the excess / undisclosed quantity of 'rough stone' excavated and removed from the quarry of Shri SA Subbaiah was 1,02,241 cubic meters only. The same alone was required to be considered as the excess quantity of rough stone supplied to the assessee for the production of blue metal. The balance quantity of stones other than rough stone (suitable for production of blue metal) had not been taken out from the quarry though excavated from the quarry and the same was found to be dumped / stacked in and around the quarry site as per the order of the RDO. Therefore, the unaccounted production of blue metal and the corresponding unaccounted sales of blue metal of the assessee was required to be determined on the basis of the undisclosed quantity of rough stone taken out from the quarry to

the extent of 1,02,241 cubic meters only in respect of the quarry of Shri SA Subbaiah as against 22,66,200 cubic meters considered by the AO in the assessment order.

6.10 With regard to quarry of Shri B Kubendran, it was seen that no order had been passed by RDO. However, the above conclusion in respect of quarries held by Shri SA Subbaiah was equally applicable to the quarry of Sri B. Kubendran also. The DVO determined the quantum of excavation of rough stone from the said quarry at 52,528 cubic meters in his inspection report. However, the said quantum of excavation pertains to various types of stones including rough stone, as discussed supra and it was wrong to consider the entire excavated quantity as the quantity of rough stone alone. Notwithstanding the same, keeping in view the smallness of the quantity involved and the absence of RDO's determination with regard to the said quarry, it was considered that no modification would be required with regard to the working made by Ld. AO in relation to the quarry of Sri. B. Kubendran.

6.11 Finally, Ld. AO was directed to adopt total quantity of rough stone excavated and supplied to the assessee from the quarry of Shri SA Subbaiah at 2,12,341 cubic meters (by aggregating the disclosed quantity of 1,10,100 cubic meters and undisclosed quantity of 1,02,241 cubic meters), as against 22,76,300 cubic meters considered by the AO in the assessment order. The total quantity of rough stone excavated and supplied to the assessee from the quarry of Sri B Kubendran considered by the AO would require no interference. The Ld. AO was accordingly directed to re-compute the actual production of blue metal, actual sales of blue metal and unaccounted sales of blue metal of the

assessee in accordance with the said quantities of rough stone procured from the quarries for AYs 2011-12, 2012-13, 2015-16 and 2017-18.

6.12 Proceedings further, it was noted that Ld. AO considered the entire quantum of unaccounted sales of blue metal as the undisclosed income of the assessee. However, such a conclusion was not based on sound reasoning. The entire sale value could not be regarded as the income of the assessee without having regard to the expenditure incurred towards procurement of raw material and production of blue metal on crushing of the rough stone. On considering such expenditure, the gross profit embedded in the unaccounted sales alone could be brought to tax. On examination of the returns of income of the assessee for the relevant AYs s 2011-12, 2012-13, 2015-16 and 2017-18, it was noticed that the Gross Profit admitted by the assessee amounted to 28.15%, 25.53%, 46.07% and 40.31% respectively. The weighted average GP ratio for all the four years considered together worked out to 41%. The same could be rounded off to 40%. It was therefore held that the gross profit embedded in the value of unaccounted sales, worked out at 40% of such unaccounted sales, was required to be treated as the undisclosed income of the assessee as arising from unaccounted sales of blue metal for AYs 2011-12, 2012-13, 2015-16 and 2017-18. The AO was directed to work out the undisclosed income accordingly. The relevant grounds of appeal were partly allowed. This was subject to the findings rendered on legal grounds as raised by the assessee. Aggrieved, the revenue is in further appeal before us.

Our Adjudication on this issue

7. From the facts, it emerges that the impugned addition has been made on the allegation that excess excavation was done from the mines.

Since the extracted stone was captively utilized by M/s RBM, the Ld. AO alleged that since there was excess excavation, the same was utilized in production of blue stone which generated unaccounted sales for M/s RBM. To support the same, Ld. AO referred to the Valuation Report of DVO who carried out inspection by using Aerial Photogrammetric Method using unmanned Aerial Vehicles (drones). On the basis of same, Ld. AO quantified the undisclosed sales in the hands of the assessee. The methodology so adopted by Ld. AO to work out the same has already been enumerated in the preceding paragraphs. It could be seen that the working of Ld. AO yielded negative figures for FYs 2012-13, 2013-14 and 2015-16 which were ignored and no such addition was made in these years. However, the working yielded positive figures for FYs 2010-11, 2011-12, 2014-15 and 2016-17 and accordingly, the additions were made in these years. To support its working, Ld. AO referred to the statements of various persons which were also cross-examined by the assessee. Though the assessee maintained that there was no unaccounted sale, Ld. AO rejected the same and made impugned additions in the hands of the assessee.

8. The Ld. CIT(A) noted that DVO engaged the services M/s Gridline Surveys and Geospatial Pvt. Ltd for ascertaining the volume of excavation made from the quarries using the Ariel Photogrammetric Methodology using drones. The assessee objected to the same on the ground that entire volume of material allegedly excavated from the quarries was considered to be the rough stone only which was suitable for production of blue metal. However, using this method, only the total volume of the material excavated from the quarries could be determined but not the quality and quantity of various materials since the same

would depend on geological composition of the said quarries. The excavated material would consist of weathered stone, soft stone, fractured stone, loose stone, white stone etc. apart from rough stone. Only rough stone could be used as raw material for production of blue metal. Upon perusal of relevant inspection reports of DVO, Ld. CIT(A) concurred with the objection that DVO considered that the entire volume of material as rough stone and malaimann. Therefore, the inspection reports suffer from the erroneous presumption that the entire volume of material excavated from the quarries (other than malaimann) was that of rough stone which would be suitable for production of blue metal. The same was also evident from the replies given by Shri Ifthikar Ahmed (Geologist) and Shri Manikandan, the Director of M/s Gridlines Survey and Geospatial Pvt. Ltd in the course of their examination / cross-examination by the assessee during assessment proceedings. To ascertain the geological formation of layers at the quarry site, the assistance of qualified mining planner Shri Ifthikar Ahmed was taken.

9. Shri Ifthikar Ahmed clarified that the valuation was merely a rough estimate by correlating the general data available with the Department of Geology and Mining, Chennai with regard to quarry sites situated in Pudukkottai district. He clarified that the said data available with the Mining Department was based on random interval sample testing at various places in Pudukkottai district and that variations were bound to occur at different quarry sites as the said data was not site-specific. He also stated that no detailed scientific examination was carried out to ascertain different layers of minerals available in the actual quarry sites. He further stated that assessment of volume by digital elevation modeling may be somewhat appropriate only when all the excavated

portions were uniform in size and similar in composition. Considering the fact that rough stone had varied sizes of 2mm to 2m with irregular shapes, there was possibility of presence of more voids inside the heaps which may not match with the surface relief taken from unmanned Aerial photography and accordingly, errors of estimation were bound to occur in the said methodology. The same clearly weakens the conclusion of Ld. AO.

10. The DVO engaged the services of a private agency M/s Gridline Surveys and Geospatial Pvt. Ltd for the purpose of making survey of the quarry sites using Aerial Photogrammetric Methodology. Shri P Manikandan, Director of the said company, was cross-examined wherein he clarified that the said methodology could only reasonably determine the extent of volume of material excavated in cubic meters but it could not determine whether the entire material excavated was rough stone only. It was not possible to ascertain the quantum and quality of the excavated materials from an already excavated quarry. This further weakens the conclusion of Ld. AO.

11. Shri Gopalakrishnan, DVO clearly admitted that though the assessment of the total volume of material excavated from the quarries made in his report based on the Aerial Photogrammetric Method could be said to be near accurate, however, the same could not be said regarding the quality of the material excavated. He stated that the quality of material excavated such as blue metal, hard stone, rough stone, weathered rock, broken rock, waste etc. could not be accurately determined in an already excavated mine. It was thus quite clear that the said methodology could only result in determination of the total volume of the material but not the composition of such material. In our opinion,

relying on these statements, Ld. AO drew erroneous conclusion and therefore, negation of the same by Ld. CIT(A) could not be faulted with.

12. The Ld. CIT(A) noted the order of appropriate authority RDO, Iluppur passed in the case of Shri SA Subbaiah imposing penalty for excess excavation. The said order has been passed u/s 36(A) of Tamil Nadu Minor Minerals Concession Rules, 1959 imposing penalty on Shri SA Subbaiah for taking out minerals from the quarry without prior permission and without payment of seigniorage fee. The relevant proceedings by RDO were initiated at the behest of Income Tax Department and inspection report of DVO was forwarded to the said authority. Considering the same, the District Collector directed the RDO, Iluppur to take necessary action u/s 36 (A) of Tamil Nadu Minor Mineral Concession Rules after conducting the necessary enquiries and verification. Pursuant to same, land survey was physically carried out by five-member committee. The Ld. RDO arrived at the finding that 20,63,965 cubic meter of stones and 2,03,649 cubic meter of gravel was found stacked / dumped at the quarry site or nearby areas. The RDO compared the availability of the said material at the quarry site with the total volume of excavation of minerals from the quarries as per the report of the Income Tax Department and worked out the excess volume of minerals (Stone and gravel) quarried and taken out without permission. The excess quantity of black rough stone quarried and taken out without permission amounted to 1,02,241 cubic meters, which was valued at Rs.3.88 Crores at the rate of Rs.380/- per cubic meter. The RDO held that excess quantity of gravel quarried and taken out without permission amounted to 71,912 cubic meters. The penalties were levied accordingly. The Ld. CIT(A) held that this quantity could be construed to

be excess quantity of rough stone & malaimann and accordingly, directed Ld. AO to re-work the undisclosed sales in the hands of the assessee. No order was passed in the case of Shri B Kubendran and accordingly, the stand of Ld. AO was confirmed. The Ld. CIT(A) also considered the gross profit reflected by the assessee in these years and directed Ld. AO to apply average gross profit rate to undisclosed sales on the ground that entire sales could not be considered to be the income of the assessee. In our considered opinion, Ld. CIT(A) has clinched this issue in correct perspective. The findings of Ld. CIT(A) have duly considered the statements made by various persons during cross-examination and re-examination. The adjudication is based on available facts and evidences on record. We concur with the adjudication of Ld. CIT(A) and see no reason to interfere in the same. The grounds raised by revenue, for all the years, stand dismissed accordingly.

13. Unaccounted Closing Stock

13.1 This addition was made only for AY 2017-18. The same stem from the observation of Ld. AO that during search u/s 132 at the premises of M/s RBM (proprietary concern of the assessee) and M/s V. Infrastructure (proprietary concern of wife of the assessee), the raw material and finished products belonging to said concerns were kept spread across the entire premises. To ascertain the value thereof, reference was made to Valuation Cell. In report dated 11.05.2017, the value of various items was shown at Rs.474.40 Lacs whereas the malaimann stock was valued at Rs.882.88 Lacs. The value of few items was not determined in the absence of sales bills for the same. It was also found that no stock register was being maintained by the firm which was confirmed in the recorded statement. The assessee, in recorded

statement, agreed with valuation of Rs.474.40 Lacs and agreed to disclose the same as his income. The stock of malaimann was stated to be waste by-product having no sale value and the same was not agreed upon.

13.2 During assessment proceedings, upon being show-caused, the assessee disputed the valuation. It was contended that the stock found during the course of search on 07.04.2017 was included in the closing stock as on 31.03.2017 and it was duly reflected in audited financial statements for AY 2017-18. The assessee also contended that the entire stock could not be treated as unaccounted stock. It was not possible to maintain stock register. The stock inventory was taken at the end of the year which is taken to be the closing stock. The assessee stated that the closing stock for FY 2016-17 was also disclosed in the same manner. Regarding malaimann, the assessee stated that the same was merely a by-product and the same would belong to quarry license holders only.

13.3 The Ld. AO noted that the assessee admitted stock of Rs.435.54 Lacs during AY 2017-18 whereas in in recorded statement, the disclosure was for Rs.474.40 Lacs. The differential of the two i.e., Rs.38.86 Lacs was treated as unaccounted stock. The items which were not valued in the valuation report, were valued at Rs.22.34 Lacs by taking into account the rates ascertained from market information. This was also treated as unaccounted stock. Regarding malaimann, Ld. AO held that entire quarrying activity was under the operational control of RBM and the quarry license holders were persons of no means. Therefore, the value of malaimann for Rs.882.88 Lacs was also treated

as unaccounted closing stock of the assessee. The aggregate additions so made came to Rs.944.08 Lacs.

13.4 During appellate proceedings, the assessee assailed the addition by way of elaborate written submissions wherein the assessee reiterated its earlier stand. The adjudication of Ld. CIT(A) is contained in para 87 onwards. The Ld. CIT(A) noted that the impugned addition was based on the valuation of the closing stock as per the report of the DVO and the closing stock disclosed by the assessee in the return of income for AY 2017-18. The impugned addition had three components i.e., Addition of Rs.38.86 Lacs which was difference between the value of the closing stock of the items listed at Sl. Nos.1 to 8 and 11 to 12 of the valuation report of the DVO amounting to Rs.474.40 Lacs as against stock of Rs.435.54 Lacs as reflected by the assessee in return of income. The second component of Rs.22.34 Lacs was the value of items listed at Sl.Nos.9 to 10 and 13 to 14 of the valuation report whose value was not worked out in the report but the same was determined by Ld. AO based on the market prices of the said items. The third component was the value of malaimann which was held to be the closing stock of the assessee though the assessee contended that the same belonged to the quarry license-holders only.

13.5 On the first addition, the assessee argued that DVO report valued the stock at prevailing market prices whereas the closing stock was required to be valued at cost or market price whichever is lower. If the valuation was so done, there would be no understatement of the value of closing stock. The Ld. CIT(A) concurred with the same and observed that DVO valued the stock at market prices whereas it was to be valued at lower of cost or market prices. Similarly, the valuation of Ld.

AO for Rs.22.34 Lacs was at prevailing market prices. These values were required to be re-computed at cost in order to arrive at correct valuation of the closing stock. To arrive at such computation, it would be appropriate to reduce the closing stock valued at market price by the amount of net profit embedded in such market prices. In FY 2016-17, M/s RBM reflected net profit of 17% of the sales turnover. Accordingly, the net profit component in closing stock so valued by DVO and AO aggregating to Rs.496.74 Lacs (Rs.474.40 Lacs + Rs.22.34 Lacs) was 17% which came to be Rs.84.44 Lacs. On excluding the said profit element, the closing stock value at cost would come to Rs.412.29 Lacs as against Rs.435.54 Lacs as already disclosed by the assessee in its return of income for AY 2017-18. Thus, there was no unaccounted closing stock which was required to be brought to tax for these two items. Accordingly, the addition of Rs.38.86 Lacs and Rs.22.34 Lacs was deleted.

13.6 Regarding valuation of malaimann, it was noted that malaimann of 2,50,000 cubic meters was listed at S.No.15 of the valuation report of the DVO and the same was valued at the market price of Rs.882.88 Lacs. The assessee contended that the stock did not belong to him but the same belonged to the quarry license holders since malaimann was waste raw earth which is excavated during the course of the quarrying of mines. The said argument was accepted. It was noted that malaimann was nothing but sand / gravel which is excavated along with stone and other minerals during the course of quarrying. Since it is generated in the course of quarrying, the same would belong to the quarry license holders until the same is sold to third parties. The malaimann which was lying in the area in and around the quarry site was

taken into consideration by the DVO and the same was included in the closing stock of the assessee. The Ld. AO considered the said closing stock of malaimann as the closing stock belonging to the assessee on the reasoning that though the quarry licenses were held in the names of Shri SA Subbaiah and Shri B Kubendran, the said persons were mere name-lenders and the actual quarrying operations were carried out by the assessee. While adjudicating the issue of deduction of quarry expenses, it was held that it could not be considered that the assessee was actually carrying out the quarry operations having regard to the facts and circumstances of the case. Applying the said finding in the context of the closing stock of malaimann also, it was to be considered that the said closing stock belonged to the quarry license holders only. Though the said material was found on the quarry lands owned by the assessee, the said lands were given on lease to Shri SA Subbaiah and Shri B Kubendran, who obtained quarry licenses in respect of the said quarry lands. Therefore, the stock of malaimann could not be considered to part of the closing stock of the assessee and it could not be treated as unaccounted closing stock of the assessee. Accordingly, the impugned addition of Rs.882.88 Lacs was deleted against which the revenue is in further appeal before us.

Our Adjudication on this issue

14. From the facts as enumerated in the preceding paras, it is quite clear that the department's valuation was based on market rates whereas the stock is to be valued at lower of cost price and market price. The Ld. CIT(A) re-worked the same and excluded the profit element from valuation. It could be seen that after excluding the profit element, the valuation would come down to Rs.412.29 Lacs as against Rs.435.54

Lacs as already disclosed by the assessee. In such a case, the addition of Rs.38.86 Lacs and Rs.22.34 Lacs has correctly been deleted.

15. We have confirmed the stand of Ld. CIT(A) on the issue of disallowance of quarry expenses. The assessee has contended that the stock of malaimann would belong to the quarry license holders since malaimann was waste raw earth which is excavated during the course of the quarrying of mines. Malaimann was nothing but sand / gravel which is excavated along with stone and other minerals during the course of quarrying. Since it is generated in the course of quarrying, the same would belong to the quarry license holders until the same is sold to third parties. The Ld. CIT(A), while adjudicating the issue of deduction of quarry expenses, took a stand that it could not be considered that the assessee was actually carrying out the quarry operations having regard to the facts and circumstances of the case. Applying the said finding in the context of the closing stock of malaimann also, it was held that the closing stock belonged to the quarry license holders only. Since we have confirmed the findings of Ld. CIT(A) on the issue of quarry expenses, this aforesaid conclusion is also to be accepted. Therefore, we see no reason to interfere in the same. The grounds thus raised by the revenue stand dismissed.

16. Undisclosed receipts from SRS mining

16.1 The addition towards undisclosed receipts from M/s. SRS Mining was made for AYs 2015-16 to 2017-18. The impugned addition stem from search conducted by the department u/s 132 in the case of M/s SRS Mining & Others on 08.12.2016 wherein certain loose sheets were seized vide ANN/KGAR/MPKSSR/LS/S-1 from the business premises of M/s SRS Mining at Bazullah Road, T Nagar, Chennai and

certain loose sheets vide ANN/KGA/SRS-YS/LS/S were seized at the business premises at Yogambal Street. The information was received from the Assessing Officer of M/s SRS Mining i.e., DCIT Central Circle-24, Chennai that seized loose sheets from page Nos. 111 to 124 of ANN/KGAR/MPKSSR/LS/S-1 and seized loose sheets from page Nos. 84 to 104 of ANN/KGA/SRS-YS/LS/S contained the details of payment of 20% of net monthly proceeds of sand mining business to the assessee by M/s SRS Mining. Reference was made to the sworn statement of Shri K Srinivasulu dated 10.12.2016 which was also received from the AO of M/s SRS Mining. In the said statement, Shri K Srinivasulu (an associate of Shri J. Sekar Reddy, partner of M/s SRS Mining) stated in response to Q. No.6 that the profit of M/s SRS Mining was shared in the ratio of 30:30:20:20 amongst Shri J Sekar Reddy, Shri S Ramachandran, Shri K Rathinam and Shri C. Vijayabaskar respectively. Based on the details of month-wise share of profits received by the assessee during the period from June, 2014 to October, 2016 available in the said seized material, the amounts allegedly received by the assessee from M/s SRS Mining was quantified at Rs.49.40 Crores, Rs.4.20 Crores and Rs.31.85 Crores for AYs 2015-16, 2016-17 and 2017-18 respectively. Based on the said information and copies of the seized material as received from the AO of M/s SRS Mining, Ld. AO of present assessee issued notices u/s 153C for AYs 2015-16 to 2017-18 on 19.11.2019 after recording the requisite satisfaction. A show-cause notice was issued to the assessee proposing to treat the alleged profits as undisclosed receipts of the assessee. The assessee denied all these allegations. The assessee also referred to the reply given by him to Q. No.21 of his sworn statement dated 03.08.2017 stating that he had no connection at all with M/s SRS Mining and he did

not receive any such amount from the said entity as alleged. It was also pointed out that no evidence or material was found in the course of his search regarding alleged ownership of M/s SRS Mining.

16.2 The Ld. AO observed that the relevant seized material was in the nature of loose sheets containing monthly income-expenditure accounts. The said loose sheets contained the details of the income, expenses and net income from sand business at various places. The loose sheets also contained the details of distribution of the net income in certain ratios. The AO pointed out that Shri K Srinivasulu, in reply to Q.No.6 of his sworn statement dated 10.12.2016 stated that the profit of M/s SRS Mining was shared in the ratio of 30:30:20:20 amongst Shri J Sekar Reddy, Shri S Ramachandran, Shri K Rathinam and Shri C. Vijayabaskar respectively. Shri K Srinivasulu was a close associate of Shri J Sekar Reddy and was looking after the operations of M/s SRS Mining. Though there was subsequent retraction of the statement, the same was without any basis and no credible explanation was offered by him with regard to the entries in the loose sheets supported by credible evidences. Considering the nature of transactions and the nature of personalities involved, maintenance of formal, clear and unambiguous books of account could not be expected in such transactions. The sworn statement given during the course of search only would give the correct picture as the deponent was free to depose the actual facts known to him without being under the compulsive influence of his masters. Subsequently, the deponents come under the influence of concerned persons which led to retraction of statements given during the course of search. Therefore, it was to be concluded that the assessee received 20% of profits / income from M/s SRS Mining from the sand mining

business and made impugned additions towards undisclosed receipts from M/s SRS Mining. The impugned additions were made accordingly which were subjected to assessee's further appeal before Ld. CIT(A).

16.3 The Ld. CIT(A) observed that the impugned addition was based on entries found in loose sheets as found during search on M/s SRS Mining and on the basis of statement of Sri. K. Srinivasulu u/s 132(4) on 10.12.2016. The assessee contended that the seized material as referred to by Ld. AO did not contain any mention of the name of the assessee. It was pointed out that the alleged profit-sharing ratio of 30:30:20:20 with the assessee being the recipient of 20% share of profits from M/s SRS Mining as stated by Sri. K. Srinivasulu in his statement u/s 132(4) dated 10.12.2016 was nowhere found in the seized material. The assessee also pointed out that the seized material did not contain any indication that the assessee was the fourth partner of M/s SRS Mining as alleged in the statement of Shri. K Srinivasulu. Reference was made to the joint affidavit of three partners of M/s SRS Mining (Shri J Sekar Reddy, Shri S Ramachandran and Shri K Rathinam) dated 24.12.2019 wherein they have affirmed that they are the only partners of the said firm. Therefore, no reliance could be placed on the statement of Shri K. Srinivasulu. It was also stated that the statement was retracted and he confirmed his retraction during the course of his cross-examination and re-examination on 26.12.2019. Since there was no evidence, the impugned additions were not justified.

16.4 The Ld. CIT(A) noted that the impugned addition was made on the basis of loose sheets and on the basis of statement made by Shri K. Srinivasulu. In reply to Q.No.15 of statement, he stated that "the said loose sheets contain the details of total unaccounted receipts and

expenses pertaining to SRS Mining and distribution of profits to its partners viz., Sri S Ramachandran, Sri Sekar, Sri Rathinam and Sri Vijayabaskar (the silent partner)". Further, Shri K. Srinivasulu was specifically requested to explain the contents of page No.124 of ANN/KGAR/MPKSSR/LS/S-I at Q.No.6 of his statement u/s 132(4) dated 10.12.2016. In response to the said question, he explained that the said loose sheet reflected total receipts & expenses and profit of SRS Mining and distribution of profit amongst partners. He stated that the profit of Rs.19 crores as shown in the said sheet will be shared in the profit-sharing ratio of 20:30:20:20 amongst Shri S Ramachandran, Shri Sekar, Shri Rathinam and Shri Vijayabaskar. Accordingly, Ld. AO worked out the undisclosed share of profit as received by the assessee and made impugned additions. However, upon careful perusal of the relevant seized material, it was noticed that the name "Vijayabaskar" (the name of assessee) was not found mentioned anywhere in the seized loose sheets at page Nos.111 to 124 of ANN/KGAR/MPKSSR/LS/S-I and at page Nos.84 to 104 of ANN/KGA/SRS-YS/LS/S including page No.124 of ANN/KGAR/MPKSSR/LS/S-1 based on the contents of which Shri K Srinivasulu had specifically mentioned the said name in his statement dated 10.12.2016. It was further noted that the alleged profit-sharing ratio of 30:30:20:20 amongst the four partners of M/s SRS Mining including the assessee as a silent partner with 20% share as mentioned by Shri K Srinivasulu in his statement dated 10.12.2016 was also conspicuous by its absence in the relevant seized loose sheets. On the contrary, it could be seen that the loose sheet at page No.103 of ANN/KGA/SRS-YS/LS/S whose image was pasted by Ld. AO in the assessment order would show that the profit sharing ratio amongst the

partners of M/s SRS Mining was 60:20:20. Wherever the profit sharing ratio was found noted in the seized loose sheets, it was mentioned as either 60:20:20 or 40:30:30. The said profit-sharing ratios clearly indicate that there were only 3 partners in M/s SRS Mining and there was no fourth silent partner (Vijayabaskar) as stated by Shri K Srinivasulu. It was thus unambiguously evident that the seized material neither reveals that the assessee was a silent partner in M/s SRS Mining nor reveals payment of 20% share of profit to the assessee by the said firm. The Ld. AO merely relied on the statement of Shri. K. Srinivasulu to arrive at such a conclusion. However, it was evident that the aforesaid statement of Shri K Srinivasulu was contrary to the contents of the seized material and consequently, the same could not be considered as a reliable statement. There was no other material available on record to support the conclusion of Ld. AO. On the contrary, M/s SRS Mining had three partners as per the returns of income filed by it which do not include the assessee. Further, the three partners namely Shri S Ramachandran, Shri J Sekar Reddy and Shri K Rathinam executed a joint sworn affidavit on 24.12.2019 solemnly affirming the fact that they were the only partners of M/s SRS Mining and there was no other partner in the firm apart from them. It was also evident that no evidence or material was found during the search in the case of the assessee regarding him being a silent partner in M/s SRS Mining and receipt of undisclosed share of profit from the said firm which was a very crucial aspect and strongly bring out the unsubstantiated and unreliable nature of the statement of Shri K Srinivasulu in relation to the allegation made against the assessee.

16.5 The Ld. CIT(A) further noted that the impugned addition was made on the basis of material seized from a third-party during the course of search conducted in the case of that party. The seized material did not contain the name of the assessee and the same was without any corroborative evidence. The said material was neither seized from the premises of the assessee nor was the same found to be in the handwriting of the assessee. Therefore, the same would not constitute adequate evidence to draw any adverse inference against the assessee in the absence of any other corroborative evidence. The ratio of decision of Hon'ble Delhi High Court in the case of **CIT Vs Sant Lal (2020] 118 Taxmann.com 432 (Del)** would apply wherein it was held that where a diary was seized in search of the premises of a third-party allegedly containing entries of hundi transactions on behalf of various parties including the assessee, no addition could be made based on the said entries since the diary was neither found from premises of assessee nor was it in the handwriting of assessee and revenue failed to produce any other cogent material to link the assessee to the diary. In the present case, Ld. AO did not refer to any cogent material to corroborate the entries made in the material seized from a third-party which are purportedly the transactions made by the said third-party with the assessee. Pertinently, the payments allegedly noted in the seized material had no acknowledgement by the assessee of having received the alleged payments by way of appending his signature / initial against the said payments. If a third-party unilaterally makes entries in a diary / note book showing payments to a person to suit his convenience, the payments could not be inferred to have been made to the said person, unless there was corroborative evidence to establish the actual making

of payments to the said person. There was no reference to such corroborative evidence in the assessment order. Reliance was also placed on the decision of Jabalpur Tribunal in the case of **ACIT Vs Satyapal Wassan [TS-5104-ITAT-2007(Jabalpur)-O]** stressing the importance of gathering corroborative evidences in support of the contents of a seized document particularly when the document was bereft of necessary details and it was not complete in all respects. Reference was also made to the decision of Mumbai Tribunal in the case of **Riveria Properties Pvt. Ltd. (ITA No.250/Mum/2013)** holding that AO was required to bring on record further evidence to show that the money had actually exchanged between the parties in case where there was no other evidence on record to prove that on-money was paid except the loose sheet found in the premises. The Hon'ble Supreme Court in **Common Cause Vs. Union of India (2017) 77 Taxmann.com 245 (SC)** stressed the need for exercising caution and for bringing on record relevant, reliable and cogent evidence to corroborate the entries found in loose sheets regarding the payments allegedly made to important constitutional functionaries so that the process of law is not abused by unscrupulous persons or business houses in order to achieve ulterior goals. Though the said decision was rendered in the context of ordering criminal investigation, the principle stated therein was broadly applicable to the income tax proceedings also. It was, therefore, all the more important that corroborative evidence was made available on record in support of the entries in the seized material found in the third-party premises which are allegedly indicative of payments made to the assessee.

16.6 It was further held that the statement of Shri K. Srinivasulu was found to be contrary to the contents of the seized material. He was neither a partner nor an employee of the said firm. Though the relevant seized material was found in his possession, however, in reply to Q.No.3 of statement dated 08.12.2016, he stated that the entries were made in the seized material by him on the instructions of the partners of M/s SRS Mining. It was very clear that he had no first-hand knowledge of the payments noted in the seized material and he had merely noted whatever had been told to him by partners. Therefore, the said statement would serve a very limited purpose of ascertaining the identity of the person who made the entries and nothing more. Since the entries were made by him on the instructions of the partners, it would be the partners who were required to explain the nature of payments, the purpose of payments and the identity of the recipients. However, there was no reference to any such statement of the partners of M/s SRS Mining in the assessment orders. On these facts, the statement of Shri K. Srinivasulu could barely be considered as corroborative evidence against the assessee with regard to the entries in the seized material. Pertinently, the said statement stood retracted by him vide letters dated 21.03.2017 and 23.03.2017 addressed to the DDIT(Inv) which were submitted by him through the Jail Superintendent when he was lodged in the jail. In the retraction letters, it was claimed by him that the statement made by him u/s 132(4) was given under coercion and duress and that he was under a state of mental shock, depression and physical exhaustion at the relevant point of time due to the continuance of search action continuously for more than 3 days without a break and he not being allowed to sleep or take rest. He stated that he was not allowed to read

the typed statement and his signature was obtained by force on the statement. He stated that he never paid any money to various persons as recorded in the typed statement. He also stated that he signed the statement in order to end the prolonged ordeal of intimidation, harassment and mental torture. Further, Shri K. Srinivasulu reiterated his retraction in the course of the cross-examination by the representatives of the assessee and re-examination made by the AO during the course of the assessment proceedings on 26.12.2019. The Ld. AO rejected the retraction on the ground that the same was without any basis and no other credible explanation was offered by him with regard to the entries in the seized loose sheets supported by credible evidence. The stand of Ld. AO was unsustainable in the light of the fact that the seized material itself did not mention the name of the assessee and there was no noting regarding the receipt of 20% share of profit by the assessee. Since the statement of Shri K Srinivasulu u/s 132(4) was contrary to the contents of seized material and did not emanate from the seized material, the said statements would hold no evidentiary value. Consequently, the retraction of the said statements was to be viewed from the said perspective and need to be construed in a manner that the averments made by him in the said statements in relation to the assessee are discarded as being without substance.

16.7 Considering all these facts, the impugned additions as made by Ld. AO for AYs 2015-16 to 2017-18 was deleted. Aggrieved, the revenue is in further appeal before us.

Our Adjudication on this issue

17. From the given facts, it clearly emerges that the impugned addition has been made primarily by relying upon the statement of Shri

K. Srinivasulu which stood retracted subsequently. The Ld. AO made this addition on the basis of certain material found during the course of search on a third-party M/s SRS Mining. This information was received from Assessing Officer of that entity and notice u/s 153C was issued to the assessee. However, Ld. CIT(A), upon perusal of relevant seized material, rendered factual finding that the name of the assessee was not mentioned anywhere in the seized loose sheets at page Nos.111 to 124 of ANN/KGAR/MPKSSR/LS/S-I and at page Nos. 84 to 104 of ANN/KGA/SRS-YS/LS/S including page No.124 of ANN/KGAR/MPKSSR/LS/S-1 based on the contents of which Shri K Srinivasulu had specifically mentioned the said name in his statement recorded on 10.12.2016. It was also noted that the alleged profit-sharing ratio of 30:30:20:20 amongst the four partners of M/s SRS Mining including the assessee as a silent partner with 20% share as mentioned by Shri K Srinivasulu in his statement dated 10.12.2016 was also absent in the relevant seized loose sheets. On the contrary, the loose sheet at page No.103 of ANN/KGA/SRS-YS/LS/S would show that the profit-sharing ratio amongst the partners of M/s SRS Mining was 60:20:20. Wherever the profit sharing ratio was found noted in the seized loose sheets, it was mentioned as either 60:20:20 or 40:30:30. The said profit-sharing ratios clearly indicate that there were only 3 partners in M/s SRS Mining and there was no fourth silent partner (Vijayabaskar) as stated by Shri K Srinivasulu. This fact could not be controverted before us. It is quite clear that Ld. AO merely relied on the statement of Shri. K. Srinivasulu to decipher such a conclusion. However, the aforesaid statement of Shri K Srinivasulu has been found to be contrary to the contents of the seized material. There is no other material on record to

support the conclusion of Ld. AO. As per returns of income, that entity is having three partners only. In fact, the three partners namely Shri S Ramachandran, Shri J Sekar Reddy and Shri K Rathinam has executed a joint sworn affidavit on 24.12.2019 solemnly affirming the fact that the firm had only three partners and there was no other partner in the firm. It is also evident that no evidence or material has been found in this regard during search on assessee. Even otherwise, the so-called incriminating material has been found from a third-party premises and unless there are corroborative evidences to support the same, no such addition could be made in the hands of the assessee. The case laws being cited by Ld. CIT(A) in the impugned order duly supports the case of the assessee. The statement of Shri K. Srinivasulu has been found to be contrary to the contents of the seized material. As clearly brought out by Ld. CIT(A), he had no first-hand knowledge of the payments noted in the seized material and he had merely noted whatever was told to him by the partners. Therefore, the said statement would serve a very limited purpose of ascertaining the identity of the person who made the entries and nothing more. Since the entries were made by him on the instructions of the partners, it would be the partners who were required to explain the nature of payments, the purpose of payments and the identity of the recipients. However, the three partners have already filed joint affidavit affirming the fact that they were the only partners in the firm. It is another fact that the statement of Shri K Srinivasulu stood retracted by him vide letters dated 21.03.2017 and 23.03.2017. The said retraction stood confirmed by him during cross-examination by the representatives of the assessee and re-examination by Ld. AO during the course of the assessment proceedings on 26.12.2019. This being the

case, the said statement would lose its evidentiary value and the same could not be used to make addition in the hands of the assessee unless corroborative evidences were brought on record to substantiate the same. In the absence of any other credible evidences, the impugned addition is not sustainable.

The aforesaid conclusion would be pertinent in the light of the fact that similar additions were made by revenue in the case of another similarly placed assessee by the name Shri P. Ramamohan Rao. That assessee sought cross-examination of Shri K. Srinivasulu during the course of assessment proceedings. However, Shri K. Srinivasulu became non-cooperative and hostile during the course of preliminary examination of the said person before Ld. AO on 19-12-2018. Since the witness turned hostile, it was concluded that cross-examination would not serve any useful purpose. That assessee preferred Writ Petition before Hon'ble High Court of Madras praying for issue of directions to the AO to permit the assessee to cross-examine the witness being relied upon by Ld. AO. The writ petition was dismissed vide order dated 27.12.2018. The Hon'ble Court held that there was no infirmity in the order of AO in refusing the request for cross-examination since the witness turned hostile. The Hon'ble Court further observed that if AO was to rely on the statement of Shri K. Srinivasulu which is in favor of the revenue, the AO has to let in other reliable evidence to corroborate the same. Similarly, the Hon'ble Court in the case of M/s SRS mining Vs UOI (141 Taxmann.com 272), at para 9, observed that the statement of Shri K Srinivasulu could not be relied upon as he turned hostile by giving specific retraction statement and there was no need to accord permission to cross-examine him in view of the said reason. Considering

these observations, it was to be held that the statement of Shri K. Srinivasulu could not be used against the assessee unless some other evidence to corroborate the same was made available on record. In the present case also, Ld. AO did not rely on any other corroborative evidences except for relying on the statement of Shri K. Srinivasulu since in the sworn statements of three other partners recorded on 08-12-2016, no questions were posed to them at all regarding the seized material allegedly containing the details of incidental charges paid to various persons. It was thus evident that no other corroborative evidence was available on record in respect of notings in the seized material. Therefore, the impugned addition could not be sustained merely by relying on this statement only.

Considering all these facts, the adjudication of Ld. CIT(A) could not be faulted with. By concurring with the same, we reject the corresponding grounds of the revenue.

18. Addition of undisclosed receipts from V. Srinivasa Rao and Ors. (Gutkha Case)

18.1 This addition was made for AYs 2015-16 to 2017-18. This addition stem from a search u/s 132 in the case of V. Srinivasa Rao Polisetty & ors. as carried by department on 08.07.2016 wherein certain loose sheets were seized and marked as ANN/MS/VAY/LS/S-4 containing details of general expenses. The contents of Page No.87 of the loose sheet were explained by Shri V. Srinivasa Rao Polisetty in sworn statement recorded during search. It was stated by him that it contained details of expenditure incurred on monthly basis in respect of cash paid to Health Minister during 01.04.2016 to 15.06.2016. The payments aggregated to Rs.2.40 Crores during the period from

November, 2014 to June, 2016 comprising of payment at the rate of Rs.10 Lacs per month from November, 2014 to August, 2015 and at the rate of Rs.14 Lacs per month from September, 2015 to June, 2016. Since the assessee was health minister during this period, the assessee was show-caused proposing this addition in the hands of the assessee. The assessee denied the allegations. The copies of the seized material and sworn statement were provided to the assessee. The cross-examination of Shri V. Srinivasa Rao Polisetty was provided to the assessee on 21.12.2020 wherein that person denied the contents of sworn statements. He submitted that the signature was obtained on a typed statement. The Ld. AO re-examined the said person on same date wherein Shri V. Srinivasa Rao Polisetty reiterated that he was forced to sign without knowing the contents of the statements and forced to write the declaration at the end of the statement. The Ld. AO concluded that the illegality of the business of Gutkha had prevented him from accepting the said business and its associated transactions during the course of cross-examination and re-examination. He had no material in support of assertion that there was threat, coercion in recording of statements. Therefore, rejecting the retraction, Ld. AO made aggregate addition of Rs.240 Lacs for AYs 2015-16 to 2017-18. During first appeal, the assessee contended that there was no evidence with respect to alleged receipt. No reliance could be placed on the retracted statement. There was no corroborative evidence to support the impugned additions.

18.2 The Ld. CIT(A) noted that in answer to Q. No.23, Shri V. Srinivasa Rao Polisetty explained that Page No.87 was a ledger extract of general expenses which show expenditure on monthly basis in respect to cash paid to Health Minister of Tamil Nadu which as paid

through Shri Rajendran. He stated that the description therein “GE(HM/R)” indicates general expenses, Health Minister and Rajendran. However, the assessee contended that he had no acquaintance with Shri V. Srinivasa Rao Polisetty and he never met him and never received any amount from him.

18.3 The Ld. CIT(A), upon perusal of seized material, concurred that the name of the assessee did not appear in any of the entries as considered by Ld. AO to be pertaining to the assessee. All the entries contain only the abbreviation / acronym ‘HM’. The Ld. AO relied on the statement of Shri V. Srinivasa Rao Polisetty to conclude that ‘HM’ denotes Health Minister and the assessee was the recipient of the payment as noted in the seized material with the said abbreviation of the assessee’s official position in the material seized from a third-party. This material was seized from third-party premises. The said material was neither seized from the premises of the assessee nor was the same found to be in the handwriting of the assessee. Therefore, the same would not constitute adequate evidence to draw any adverse inference against the assessee in the absence of any other corroborative evidence. The ratio of decision of Hon’ble Delhi High Court in the case of **CIT Vs. Sant Lal (2020] 118 Taxmann.com 432 (Del)** would apply wherein it was held that where a diary was seized in search of the premises of a third-party allegedly containing entries of hundi transactions on behalf of various parties including the assessee, no addition could be made based on the said entries since the diary was neither found from premises of assessee nor was it in the handwriting of assessee and revenue failed to produce any other cogent material to link the assessee to the diary. In the present case, the seized material did

not contain complete information to facilitate drawing of adverse inference against the assessee. The information merely contain dates, the amount of payments and abbreviated names of the recipient. There was absolutely no mention in the seized material regarding the nature of the transactions of cash payments, the purpose of such payments and the precise identity of the recipient. In the absence of such essential and critical information, it could not be inferred that the payments were paid to a person whose name do not even find a place in the seized material and that the said amount represent the income of the said person. It could not be inferred with a reasonable degree of certainty that the payments were made to such a person on an abbreviated name appearing in the seized material. Any entry made in the loose sheet by a third person with scant details could not be used to fasten tax liability on the person whose name does not appear at all or only an abbreviated names appears in the seized material, in the absence of any corroborative evidence to attribute the entries to such a person. Therefore, such a document was liable to be treated as dumb document holding no evidentiary value in respect of the entries found therein unless corroborative evidence is available which could provide a reliable basis for deciphering the nature and character of the said entries. The Ld. CIT(A) referred to various judicial decisions to support the said conclusion. The same include the decision of Jabalpur Bench of Tribunal in the case of **ACIT vs Satyapal Wassan [TS-5104-ITAT-2007 (Jabalpur)-O]**, the decision of Mumbai Tribunal in the case of **Riveria Properties Pvt. Ltd. Vs ITO (ITA No.250/Mum/2013)** as well as the decision of Hon'ble Supreme Court in the case of **Common Cause vs. UOI (77 Taxmann.com 245)**.

18.4 The Ld. AO relied on the retracted statement of Shri V. Srinivasa Rao Polisetty. The witness of the revenue turned hostile and therefore, the statement of said person would lose its evidentiary value and the same could not be held against the assessee unless independent evidence was brought on record to corroborate the said statements. No such corroborative evidence was placed on record. In the decision of Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (AIR SC 410)**, it was held that every transaction as recorded in the regular books needs to be independently corroborated and proved when some liability is to be fastened in respect of such transactions. The legal principle as laid down by Hon'ble Supreme Court is that independent corroborative evidence is required in respect of entries in regular books of accounts and the same would apply in the present case.

18.5 Finally, considering all these aspects, the impugned additions were deleted against which the revenue is in further appeal before us.

Our findings on this issue

19. It is quite clear that the impugned addition has been made on the basis of statement of Shri Srinivasa Rao Polisetty which stood retracted subsequently. The said retraction was reiterated during cross-examination by the assessee and re-examination by Ld. AO. During cross-examination, he denied the contents of sworn statement and also stated that signature was obtained on a typed statement. He stated that he was forced to sign without knowing the contents of the statements and forced to write the declaration at the end of the statement. The witness of the revenue has, therefore, turned hostile. In such a case, merely on the basis of his statement, this addition could not have been

made by Ld. AO. The Ld. CIT(A), upon perusal of seized material, rendered factual finding that the name of the assessee did not appear in any of the entries as considered by Ld. AO to be pertaining to the assessee. All the entries contain only the abbreviation / acronym 'HM'. The Ld. AO relied on the statement of Shri V. Srinivasa Rao Polisetty to conclude that 'HM' denotes Health Minister and the assessee was the recipient of the payment as noted in the seized material with the said abbreviation of the assessee's official position in the material seized from a third-party. However, the statement stood retracted. Further, this material has been seized from third-party premises. Therefore, the same would not constitute adequate evidence to draw any adverse inference against the assessee in the absence of any other corroborative evidence. The case laws being cited by Ld. CIT(A) duly supports the case of the assessee. In our considered opinion, the ratio of all these case laws is clearly applicable to the facts of the present case before us. Under these circumstances, we concur with the adjudication of Ld. CIT(A). The corresponding grounds as raised by the revenue, for all these years, stand dismissed accordingly.

20. Undisclosed Receipts as per material seized from J. Srinivasan

20.1 This addition was made for AY 2017-18. In the assessment order, it was stated by Ld. AO that Shri J. Srinivasan ('JS' in short), a personal clerk to the director of public health was posted as personal clerk to the assessee in assessee's capacity as Minister of Health and family welfare. His residence was also searched on 07.04.2017 wherein two files with the names "Remo 21.10.2016 accounts sheets.docx" and "Petty cash expenses November, 2016.docx" was found in the email

account of JS. The same were downloaded, printed and seized vide ANN/RR/JS/LS/S dated 07-04-2017 (Page No.20 to 38). The said document allegedly contained date-wise details of funds received and expended during the period from 23.07.2016 to 09.11.2016. The cash received from various sources during that period aggregated to Rs.20.75 Crores. A statement was recorded from JS on 07.04.2017. In reply to Q. No.5, he stated that his role was to manage visitors and look after transfers and postings of officials pertaining to the Health Department. He further stated that he also carried out instructions given by Health Minister's family and other works assigned by the Minister. In reply to Q. No.18 with regard to contents of Page No.37 of the seized material as seized vide ANN/RR/JS/LS/S, he explained that first column represent date on which transaction took place, the second column represent the particulars of transactions, the third column represent payments made and the last column represent the amounts received. With regard to entry of Rs.212.09 Lacs shown in the receipt Column against the date 30.07.2017 with the narration as 'transfer and posting', he admitted that he received that amount on the said date. He stated that the relevant file downloaded from his email account contained statement of receipts and payments for the year 2016 prepared by him and mailed to himself. In reply to Q. No.19, he stated that he used to collect cash through other Personal Assistants (PAs) from the beneficiaries of transfer and postings and other entities connected to the Ministry of Health and family welfare and handed over the cash so collected to the assessee.

20.2 The said statement was stated to be confirmed by Shri D. Ajay Kumar (another PA of the assessee) in statement u/s 131 on 11.04.2017. The resident of another person Shri A Saravanan was also

searched on 07.04.2017 and his statement was also recorded u/s 132(4). He stated that he was doing jobs assigned to him by the assessee from November, 2013 onwards. He was private PS to the assessee and looking after transfer and posting of all the cadres in the Department of Health and proceedings of tenders with the help of other PAs to the assessee. He stated that they collected money in the process of work assigned to them and handed over the same to the assessee and his representatives. In the background of all these statements and seized material, the assessee was show-caused by Ld. AO proposing to consider the aggregate receipts of Rs.20.75 Crores as income of the assessee as allegedly received from various persons during the period from July, 2016 to November, 2016.

20.3 Upon being confronted, the assessee categorically denied the same and stated that Shri JS was not instructed to handle his financial affairs and his job was restricted to coordinating the patient referrals from various public representations. The attention was drawn to retraction letters filed by JS on 17.04.2017 and 12.12.2018. During cross-examination of JS by assessee's representative on 18.11.2019, he stated that his role was to forward the representations as presented to the Minister to various officer through proper channel and he would coordinate with the patients for better care. He stated that depositions made on 07.04.2017 was totally wrong and job description as stated by him was never carried out by him as the Minister had many PAs. He further stated that he was under stress and pressure and he succumbed to the same and signed the statement as typed by the officials. He stated that he did not receive or paid any money under the directions of the

assessee or on the directions of Shri A. Saravanan. On the basis of the same, the assessee opposed any addition on this account.

20.4 Shri JS was re-examined by Ld. AO immediately. The Ld. AO held that vague and unproved allegations of threats, coercion etc. were made by him to justify retraction. Therefore, the retraction was to be ignored. The statement given during the search alone would give the correct picture as the deponent would be free to depose the actual facts known to him without being under compulsive influence of his masters. The retraction was purely an afterthought. The relevant evidences regarding unaccounted receipts were found in the email account. The said email account was used and operated by JS, the printouts of which were seized during the course of the search at his residence. The entries in the seized material represented statement of account of receipts and payments and the same was maintained by JS who acted as PA to the assessee and he carried out the instructions given by the assessee. He had given clear and detailed explanation to the entries / notings in the said seized material in his sworn statement dated 07.04.2017. The said entries pertained to the assessee in his capacity as Health Minister. The Ld. AO also placed reliance on the statement u/s 131 by Shri D Ajay Kumar, another PA to the assessee. In his reply to Q.No.4 of the statement, Shri D Ajay Kumar stated that Shri A Saravanan, PA of the assessee used to fix the amount to be collected from the persons seeking transfer and postings and collected money from the said persons. He stated that he used to collect the money from such persons in the absence of Shri A Saravanan and would hand-over the same to A. Saravanan. Further, Shri D Ajay Kumar confirmed the reply given by Shri A Saravanan to Q.No.5 of the statement recorded at his residence

during the course of the search regarding the work assigned to various PAs including Shri D Ajay Kumar. In the said statement, Shri A Saravanan had stated that Shri D Ajay Kumar was assigned the work of collecting commission from beneficiaries of transfer and postings of Directorate of Medical Services and Food Safety. Therefore, having regard to the material seized at the residence of JS, the detailed explanation furnished by JS with regard to the contents of the said seized material in his sworn statement dated 07.04.2017 and the statements of Shri A Saravanan and Shri D Ajay Kumar, other PAs of the assessee which corroborated the statement of JS, Ld. AO inferred that the assessee was in receipt of Rs.20.75 Crores during the period from July, 2016 to November 2016. The same was undisclosed receipt and accordingly, these receipts were added to the income of the assessee for AY 2017-18.

20.5 During appellate proceedings, the assessee vehemently assailed the conclusion of Ld. AO and referred to the retraction of JS. The assessee also assailed the evidentiary value of seized loose sheets which were printouts from the download of email and its two attachments in the email-id of Shri J Srinivasan from his laptop. It was submitted that the said loose sheets being print out of digital / electronic evidence ought to be accompanied by a certificate u/s 65-B (4) of the Indian Evidence Act 1872. The same was a mandatory requirement and the same was not complied with. Reference was made to manual of CBDT as issued in the year 2014. The manual stressed the need to maintain the integrity of electronic record as evidence. In the present case, the procedure laid out in Sec. 65-B was not complied with as regard to authentication and certification of said seized material and therefore, the same could not be

relied upon. The source of the two attachments in the email of JS was not known. To support the same, reference was made to the decision of Hon'ble High Court of Madras in **M/s Vetrivel Minerals vs. ACIT (129 Taxmann.com 126)** as well as the decision of Mumbai Tribunal in the case of **Shri Anand Jaikumar Jain (ITA Nos. 3820, 3821, 3822 & 3823/Mum/2019)**. The assessee thus submitted that impugned addition as based on loose sheets were drawn from the digital evidence and not supported by the authentication and certification as required u/s 65-B of the Indian Evidence Act and therefore, the addition was to be deleted.

20.6 The Ld. CIT(A) noted that the addition was based on seized material which was represented by the seized loose sheets at page nos.72 to 90 of ANN/RR/JS/LS/S. The same was printed from two excel sheets bearing excel file names "Remo 21.10.2016 accounts sheets.docx" and "PETTY CASH EXPENSES NOVEMBER 2016.docx" which was found as attachments in the email account of JS and which was sent to his email-id from the same email-id. The said seized material allegedly contained details of cash receipts and cash payments during the period from 23.07.2016 to 09.11.2016. The aggregate of the cash receipts amounted to Rs.20.75 Crores. The AO held that the said cash receipts as reflected in the seized material represent the unaccounted cash receipts of the assessee by relying on the statement of JS explaining the contents of the seized material and the statements of Shri A Saravanan and Shri D Ajay Kumar, PAs to the assessee stating to be corroborating the same. The assessee assailed the impugned addition on merits and also challenged the admissibility of the seized loose sheets as evidence. On legal ground, it was urged that the seized loose sheets which were printouts taken from the two excel files as

downloaded from the email account of JS, were not accompanied by a certificate u/s 65B of Indian Evidence Act 1872. It was contended that this certificate u/s 65B was a condition precedent as to the admissibility of evidence by way of electronic record as reiterated in the judgement of the Hon'ble Apex Court in the case of **Arjun Pandit Rao Khotkar vs. Kailash Kushanrao Gorantyal and others (2020 SCC Online SC 571)**.

20.7 The assessee contended that the loose sheets as relied upon by Ld. AO did not constitute admissible evidence in view of non-compliance of the mandatory requirement that the secondary evidence of an electronic record has to be accompanied by a Certificate u/s 65B(4) of the Indian Evidence Act, 1872. The assessee stated that the email and its two attachments represent the primary evidence which is on a digital platform and the same are in the nature of electronic record and the printouts taken and seized after downloading the said attachments represent secondary evidence of such electronic record. The assessee stated that the source of the aforesaid two attachments in the email of Shri J Srinivasan was not known. It was pointed out that the said attachments were downloaded, printed and seized and the same were sought to be used as evidence without following the procedure prescribed in the Indian Evidence Act as well as the procedure laid down in the Digital Evidence Investigation Manual 2014 of CBDT which was in conformity with the Indian Evidence Act. The assessee also contended that computer output in the form of printouts could be considered as a "document" under the Indian Evidence Act with the pre-requisite that the conditions as prescribed u/s 65B (2) are mandatorily fulfilled. The assessee contended that where a statement in evidence is sought to be given by virtue of Sec.65B, the provisions of Sec.65B (4) require that

such statement in evidence is accompanied by a certificate regarding the satisfaction of the conditions laid down in Sec.65B (2). Reliance was placed on the decision of Hon'ble Supreme Court in the case of **Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal and Others 2020 SCC Online SC 571** wherein it was held that certificate u/s 65B (4) is mandatory and a condition precedent to the admissibility of evidence by way of electronic record. This decision is stated to be relied upon by Hon'ble Jurisdictional High Court in the case of **Vetrivel Minerals (129 Taxmann.com 126)**. The assessee contended that in the light of these decisions as well as in the light of CBDT Digital Evidence Investigation Manual, the seized loose sheets could not be treated as admissible evidence in the absence of mandatory certification as required u/s 65B of the Indian Evidence Act and the addition made by the AO on the basis of such inadmissible evidence is not sustainable in Law.

20.8 Considering the submissions of the assessee, a remand was sought from Ld. AO on 21.03.2023 requesting for submission of copy of certificate drawn u/s 65B (4) with regard to the said evidence. In remand report dated 29.03.2023, it was submitted by Ld. AO that during the course of search at residence of JS on 07.04.2017, two attachments were found in his email-id which were seized vide Annexure ANN/RR/JS/LS/S. The said documents contained date-wise details of funds received and expended during 23.07.2016 to 09.11.2016. The said email-id was opened by Shri JS as the password was only in his possession and the printouts of the email were seized from JS. These printouts were signed by Shri JS himself and they were seized vide annexure ANN/RR/JS/LS/S as per due procedure of law. These evidences constitute primary evidence. After having taken printouts, the

evidence was not in electronic form. The provisions of Section 65B of the Indian Evidence Act would apply only in cases where the evidences were presented in electronic form and the printouts, which are unsigned, are produced as evidences. Therefore, the provisions of Sec.65B of Indian Evidence Act, 1872 would not apply to the circumstances of this case. The integrity and evidentiary value of these evidences could not be questioned during the course of the appeal proceedings. It was also stated that the email service including access and storage of the mails were provided by an independent service provider on a global scale with built-in safety features. It was impossible to manipulate / alter the contents stored in the e-mail provided by an independent service provider known for providing highly secure encrypted e-mail transmissions. The signed printouts of the contents of the e-mail were not electronic evidences and the provisions of Sec.65B would not apply. In the present case, no electronic device was produced as evidence as such. But it was the printouts taken during the course of the search in the presence of the witnesses and signed by Shri JS himself. The email was not a computer-generated output or a document saved in the computer. The Ld. AO also referred to the deposition made by Shri JS on the contents of the documents in his sworn statement dated 07.04.2017 wherein he acknowledged that the email contents were prepared by him. The said deposition constitutes complete evidence for the transactions recorded therein. The email extract constitutes 'document' as per Section 3 of the Indian Evidence Act, 1872 and hence admissible as evidence without reference to Section 65B of the Indian Evidence Act, 1872. The legal presumption under Section 132(4A) of the Income Tax Act, 1961 would also apply.

20.9 The remand report was confronted to the assessee who vehemently opposed the stand of Ld. AO and continued to press its legal ground on admissibility of legal grounds. The adjudication of Ld. CIT(A) is contained in para-160 onwards. The Ld. CIT(A) held that the provisions of Sec.65B specifically deals with provisions relating to admissibility of electronic records. These provisions have overriding effect over other provisions of the Indian Evidence Act in view of non-obstante clause embedded therein. The provisions of Sec.65B (1) clearly provide that information contained in the electronic records which is printed on paper or stored / recorded / copied in optical / magnetic media produced by a computer (referred to as computer output) shall be deemed to be a document and shall be admissible as evidence in any proceedings without the production of the original, if the conditions mentioned in the sections are satisfied in relation to the information in the computer in question. The conditions to be satisfied for computer output / secondary evidences to be deemed as a document which is admissible as evidence in any proceedings are laid down in Sec.65B (2). The provisions of Sec.65B (4) state that a certificate containing the particulars of identification of electronic record, the manner of producing such electronic record and all particulars of computer device involved in production of the electronic record and which is signed by a person occupying a responsible official position in relation to the operation of the relevant computer device or the management of the relevant activities shall be treated as evidence of any matter stated in the said certificate. Therefore, the certificate was a mandatory requirement for treating the computer output / secondary evidence of an electronic record as evidence to prove the contents of a primary electronic record. The

Hon'ble CBDT also instructed field authorities to comply with the special procedure to handle such computer output in Digital Evidence Investigation manual. The Hon'ble Supreme Court in the case of **Anvar P.V. vs. P.K. Basheer AIR 2015 SC 180** held that the safeguards as provided in Sec.65A and 65B of the Indian evidence Act are meant to ensure the source and authenticity of an electronic record sought to be used as an evidence since source and authenticity are two hallmarks of an electronic record. It was noted that the electronic records would be more susceptible to tampering, alteration, transposition, exclusion etc. In the decision of **Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal and Others 2020 SCC Online SC 571**, it was held that certificate under Sec.65B (4) was mandatory and the condition precedent to admissibility of evidence by way of electronic record and that the non-obstante clause in 65B (1) makes it clear that when it comes to information contained in an electronic record, its admissibility is possible only if all the conditions as prescribed in such section are fulfilled, irrespective of whatever has been provided in Sec.62 or 65 of the Evidence Act.

20.10 The contention of Ld. AO that the loose sheets would constitute primary / original evidence was not tenable. The same were printouts of excel file attachments as found in the email account of JS after downloading the said attachment during the course of search. The loose sheets were mere printouts of an electronic record found in the email account of JS. The print outs did not have independent existence. In such a case, the provisions of Sec.65B would apply for determining the admissibility of such evidence.

20.11 Even the excel file attachments to the email found in the email account of JS could not be regarded as primary electronic evidence since the same could not be produced as a part of the process of preparation / generation of email in the email account but they could only have been uploaded as attachments either from the internal hard disk of the same computer device or from external memory devices such as hard disk, pen drive etc. where the original excel files may have been stored. It is only such original excel file that could be treated as primary electronic records. The said excel sheets found as an attachment themselves represent secondary evidence and the stand of Ld. AO was untenable. Though email as such may not represent a computer-generated output or document saved in the computer, an excel file attachment to the email certainly represents a computer-generated output and a document saved in the computer. Once such excel file which is found as an email attachment is sought to be proved by leading the secondary evidence in the form of printouts of the downloaded email attachment, the provisions of Sec. 65B would be attracted and certificate u/s 65B (4) would be mandatory requirement. These requirements have overriding effect on all the other provisions of Indian Evidence Act. Regarding contention of Ld. AO that the rigors of Indian Evidence Act would not apply to Income Tax proceedings, it was held that these provisions deal with the basic requirements to be met for admitting secondary evidence of an electronic record as evidence in any proceedings having regard to the special nature of electronic records as compared to the records in manual form. Since the electronic evidences are amenable to tampering, alteration, transposition, exclusion etc. it would be very important to safeguard the secondary evidences of such

electronic record and it was to ensure that it complies with the conditions of Sec.65B for being admitted as evidence in Income Tax proceedings. The Hon'ble Supreme Court in the case of **Chauharmal vs CIT (172 ITR 250)** held that though Income Tax authorities are not strictly bound by the rigors of technical rules of evidences yet they are not precluded from invoking the principles contained in the Evidence Act whenever the occasion demands. The Ld. CIT(A) also referred to the decision of Hon'ble High Court of Madras in the case of **M/s Vetrivel Minerals vs. ACIT (129 Taxmann.com 126)** to support its conclusion.

20.12 On the issue of admission of JS, it was noted that JS retracted his statement by filing affidavits dated 17.04.2017 and 12.12.2018. He retracted the sworn statement also during the cross-examination by the assessee as well as during re-examination by Ld. AO during the course of assessment proceedings on 18.11.2019. In any case, the deposition made by JS could not be construed to meet the procedural prescription of Sec.65 of India Evidence Act. The provisions of Sec. 65B and the provisos of Sec. 132(4) were in different fields. Sec.65B lays down the conditions to be satisfied and procedure to be followed for determining the admissibility of electronic records as evidence in any proceedings. On the other hand, Sec. 132(4) deals with different aspect of presuming the ownership and the veracity of documents as seized during the course of search. These provisions would become relevant and applicable only after the secondary evidence of an electronic record seized during the course of search has been found to be admissible as evidence as per the requirements of Sec.65B. Finally, considering the fact that such certificate u/s 65B (4) was not available in relation to seized loose sheets, the same could not be

regarded as admissible evidence and the impugned additions were to be deleted. The grounds, on merits, were held to redundant. Aggrieved, the revenue is in further appeal before us.

Our findings on this issue

21. From the facts, it emerges that the impugned addition stem from certain loose sheets which are nothing but print out of two excel sheets which was found as attachments in the email account of Shri J Srinivasan. The email was sent to himself by the same person. Based on the contents of these loose sheets, Ld. AO alleged that the cash receipts as reflected therein constitute unaccounted cash receipts of the assessee. Reliance was placed on the statement of JS explaining the contents of the seized material and corroboration of the same was sought from the statements of Shri A Saravanan and Shri D Ajay Kumar, PAs to the assessee. However, the statement of Shri JS stood retracted within a short span by affidavits dated 17.04.2017 and 12.12.2018. He was cross-examined by assessee's representative and re-examined by Ld. AO during the course of assessment proceedings on 18.11.2019 wherein he continued to maintain the retraction. It could be seen that Ld. AO do not have any other evidence to corroborate the allegation that the assessee received undisclosed amounts as stated in the excel sheets. Pertinently, no evidence, in this regard, has been found during search on assessee. In our considered opinion, on these facts alone, the whole case of revenue would fall apart.

22. Proceeding further, so far as the admissibility of printouts of excel sheets are concerned, we concur that the two excel sheets were mere attachments in the email. The source of the files was unknown. The fact that the printouts were signed and authenticated by JS would

not alter this material position. The entire basis of addition is two excel sheets which would constitute primary evidence and the same are electronic records. As rightly held by Ld. CIT(A), the provisions of Sec.65B specifically deals with provisions relating to admissibility of electronic records. These provisions have overriding effect over other provisions of the Indian Evidence Act in view of non-obstante clause embedded therein. The provisions of Sec.65B (1) clearly provide that information contained in the electronic records which is printed on paper or stored / recorded / copied in optical / magnetic media produced by a computer (referred to as computer output) shall be deemed to be a document and shall be admissible as evidence in any proceedings without the production of the original, if the conditions mentioned in the said sections are satisfied in relation to the information in the computer in question. The conditions to be satisfied for computer output / secondary evidences to be deemed as a document which is admissible as evidence in any proceedings is laid down in Sec.65B (2). The provisions of Sec.65B (4) mandate furnishing of a prescribed certificate which is absent in the present case. Even during hearing before us, till date, no certificate has been shown to us. In our considered opinion, this certificate was a mandatory requirement for treating the computer output / secondary evidence of an electronic record as evidence to prove the contents of a primary electronic record. The Hon'ble CBDT has also considered this position and instructed field authorities to comply with this special procedure to handle such computer output in Digital Evidence Investigation manual. The case law of Hon'ble Supreme Court in the case of **Anvar P.V. vs. P.K. Basheer AIR 2015 SC 180** support the conclusion of Ld. CIT(A). In this decision, it was held that the

safeguards as provided in Sec.65A and 65B of the Indian evidence Act were meant to ensure the source and authenticity of an electronic record sought to be used as evidence since source and authenticity are two hallmarks of an electronic record. It was noted that the electronic records would be more susceptible to tampering, alteration, transposition, exclusion etc. In the decision of **Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal and Others 2020 SCC Online SC 571**, it was held that certificate under Sec.65B (4) was mandatory and a condition precedent to admissibility of evidence by way of electronic record and that the non-obstante clause in 65B (1) makes it clear that when it comes to information contained in an electronic record, its admissibility is possible only if all the conditions as prescribed in such section are fulfilled, irrespective of whatever has been provided in Sec.62 or 65 of the Evidence Act. The decision of Hon'ble High Court of Madras in the case of **M/s Vetrivel Minerals vs. ACIT (129 Taxmann.com 126)** also support the conclusion of Ld. CIT(A).

We note that this decision has subsequently been followed by Hon'ble Court in the case of **Saravana Selvarathnam Retails (P.) Ltd. vs. CIT (160 Taxmann.com 287; 23/02/2024)**. In this decision, Hon'ble Court held that the manual issued by the CBDT would be in the nature of orders, instructions and directions as prescribed u/s 119(1) of the Act and in such case, it is mandatory for the Department to follow it. It was further held that merely gathering electronic evidence was not sufficient rather the efforts have to be made to corroborate the contents therein vis-à-vis other evidences such as material and oral. All these decisions support the case of the assessee.

23. As rightly considered by Ld. CIT(A), the loose sheets were mere printouts of an electronic record found in the email account of JS. The printouts do not have independent existence and therefore, the provisions of Sec.65B would apply for determining the admissibility of such evidence. Further, these excel sheets are by way of attachments only which would be uploaded either from the internal hard disk of the computer device or from external memory devices such as hard disk, pen drive etc. where the original excel files may have been stored. It would only be such original excel files that could be treated as primary electronic records. The said excel sheets founds as an attachment themselves would represent secondary evidences only. Therefore, mandatory conditions of Sec. 65B have to be fulfilled. It is clear that this requirement has overriding effect on all the other provisions of Indian Evidence Act. In the absence of any such certificate even up-to this point of time, the adjudication of Ld. CIT(A) could not be faulted with. We order so. Even on merits, we find that the seized excel sheets are not supported by any corroborative evidences. The only basis of addition is the statement of Shri J. Srinivasan which stood retracted within a short span of time. The retraction was reiterated by JS during cross-examination and re-examination. In such a case, the whole case of the revenue would fall apart. Accordingly, the corresponding grounds as raised by the revenue stand dismissed.

24. Addition of Unexplained Expenditure As per material seized from D. Ajay Kumar

24.1 This addition was made for AY 2017-18. This addition stem from search at the residence of Shri D. Ajay Kumar. The official role assigned to that person was to receive and dispatch tapals and

maintenance of files. During search on him, two spiral notebooks were seized vide Annexures ANN/MS/DA/B&D/S-1 and S-2. The outer page of the spiral notebook no. 2 contained printed State Government Emblem and the name of Health and family welfare department and 'Ajay' written on it. The inner side of the said page contained the name and designation of the assessee at the bottom. The said spiral notebook allegedly contained notings with regard to expenses incurred towards food items, liquor and accommodation etc. during February, 2017. The total expenditure was found to be Rs.30.90 Lacs as noted on Page No.24 of the spiral notebook.

24.2 Shri D. Ajay Kumar, in recorded statement, stated that he merely recorded the details given to him by Shri A. Saravanan and that he had no idea regarding what it was meant for and the source of money. In statement u/s 131 on 04.07.2016, he stated that Page Nos. 18 to 25 of the spiral notebook-2 contained details of expenses incurred for Koovathur MLA camp. The Ld. AO alleged that the said expenditure was sourced from assessee and accordingly, he proceeded to make this addition in the hands of the assessee. The assessee opposed any such addition and stated that the seized material did not relate to him and he was not holding any office as an office bearer or as in-charge of administration or accounts in the political party to which he belonged. It was also stated that Shri Saravanan was not working as his PA and he had not entrusted any responsibility to him. Shri D. Ajay Kumar was working as a PA who was responsible for collecting petitions from the public and he was not connected with any political party matters. The assessee also referred to the retraction made by Shri D. Ajay Kumar. The cross-examination of Shri D. Ajay Kumar was provided to

assessee's representative on 22.11.2019. He stated that he worked at the camp office of the assessee rendering clerical assistance. He was forced and threatened to sign the typed statements on 07.04.2017, 11.04.2017 and 04.07.2017. He also stated that he was not aware of the contents of the sworn statements recorded from him and he was not provided with the copies of the said statements by the department. He stated that he was given the copies of the statement by the assessee on 31.12.2018 and he filed his retraction affidavit immediately on 07.01.2019 once he came to know the contents of the statements.

24.3 During re-examination by Ld. AO on same day, he reiterated the statements given during cross-examination. However, Ld. AO rejected the retraction on the ground that there was nothing on record to suggest that he was not in proper frame of mind or was under any threat, coercion or undue influence during the course of recording of the statements. There was no iota of truth / evidence to indicate that any force, threat, coercion or undue influence was brought on Shri D Ajay Kumar in the course of his various depositions. The AO observed that since the said sworn statements were short, specific to the details and simple to understand, the averment of Shri D Ajay Kumar that he was not aware of the contents of the statements, until he was provided the copies of the same by the assessee, was false and misleading. As regards the role of Shri A Saravanan, the AO observed that several other persons such as Shri J Srinivasan, Shri Nainar Mohammed and Shri J Sadiq Batcha independently confirmed the role of Shri A Saravanan in their respective sworn statements recorded during the course of the search at different premises by different Authorised Officers. The AO pointed out that Shri A Saravanan himself admitted the receipt of money

for transfers and posting and regarding the allocation of work to various PAs to the assessee as per the instructions of the assessee in his sworn statement dated 07.04.2017. Considering all these facts, Ld. AO concluded that the said material pointed to the assessee only. The availability of incriminating evidence reflecting the expenditure pertaining to the meeting of the MLAs at Koovathur during February 2017 with one of his PAs and in the light of the ability of the assessee to mobilize funds through transfer and posting etc. in the Department of Health by employing a team of PAs would lead to an inference that the source of the said expenditure was the assessee only and there was no other plausible explanation. The retraction filed by Shri D Ajay Kumar nearly after two years was clearly an afterthought. Accordingly, the amount of Rs.30.90 Lacs was added to the income of the assessee as unexplained expenditure. The assessee assailed the impugned addition by way of elaborate written submissions during first appeal.

24.4 The Ld. CIT(A) duly considered the findings of Ld. AO as well as the assessee's defense thereto. It was noted that considering the contents of spiral notebooks and by relying upon the statement of Shri D Ajay Kumar explaining the contents of the said seized material coupled with the statements of Shri A Saravanan, Ld. AO made impugned addition in the hands of the assessee. The assessee contended that Shri D Ajay Kumar was not a PA to the assessee as stated by Ld. AO rather he was working as an assistant in the office of Director of Medical services and was posted as an assistant in the assessee's office. The statement of that person was not reliable since the said person was neither a party functionary nor assigned with any such responsibility so as to know the details of a political camp. The assessee also contended

that the said statement of Sri. D Ajay Kumar dated 04.07.2017 was contrary to the statement given by the same person on 07.04.2017 with regard to the same material that he had merely scribbled the said notings as told to him by Shri A Saravanan, PA to the assessee and that he had no knowledge of what the expenses were meant for and the source of money for the said expenses. The assessee pointed out that Shri A Saravanan had also not confirmed that he had given any instructions to Shri D Ajay Kumar to record the said scribbings. The assessee also contended that Shri A Saravanan, who was his friend, was not a PA to him and that no responsibilities were assigned to Shri A Saravanan by him. Reference was also made to sworn affidavit dated 07.01.2019 as filed by Shri D Ajay Kumar stating that earlier statements were obtained under threat, coercion and intimidation and that the contents of the same were incorrect and not stated by him. During cross-examination and re-examination also, the retraction was reiterated. On the corroborative statement of Shri A. Saravanan, it was also stated that the said person had also retracted his statement by sworn affidavits dated 20.04.2017 and 01.12.2018 and reiterated the retraction during the course of his cross-examination and re-examination on 11.11.2019. He clarified therein that he was not the PA of the assessee. It was further stated that the spiral note book was not seized from the premises of the assessee. There was no mention of assessee's name in the notebook. Shri D Ajay Kumar did not state anywhere in his statement that the assessee was the source of the expenditure as noted in the spiral note book. The assessee maintained that since he was not an office bearer of the political party or in-charge of its administration or accounts, he had no connection with the expenditure incurred for Koovathur MLA camp.

Further, in view of the retractions of Shri D Ajay Kumar and Shri A Saravanan, the oral evidences as relied upon by Ld. AO was unreliable and inconclusive. There was no evidence at all to show that the assessee had funded the said expenditure. In the background of all these facts, the assessee assailed the impugned addition as made by Ld. AO.

24.5 The Ld. CIT(A) noted that Shri D. Ajay Kumar, in statement dated 07.04.2017, stated that he merely made the notings based on what was told to him by Shri A Saravanan and he was not aware of the exact nature of the expenses and the source of money for the said expenses. In the subsequent statement recorded on 04.07.2017 u/s 131, Shri D Ajay Kumar explained the nature of expenses as noted in the seized spiral note book by stating that the same pertained to the expenses incurred towards Koovathur MLA camp. The subsequent statement dated 04.07.2017 was recorded nearly 3 months after the recording of the statement dated 07.04.2017 during the course of the search. In subsequent statement, the only additional information given by him was regarding the event for which the said expenditure was incurred and nothing more. Shri D Ajay Kumar, in statement dated 04.07.2017, reiterated that he was not aware of the source of the money for incurring the said expenditure which he had earlier stated on 07.04.2017. It could reasonably be inferred that he came to know regarding the event for which the said expenditure was incurred during the intervening period from 07.04.2017 to 04.07.2017. Therefore, this feature of his statements could not be construed to mean that the statements of Shri D Ajay Kumar were unreliable or contradictory as contended by the assessee. The issue whether Shri D Ajay Kumar was

posted in the office of the assessee as a PA or as an assistant was not relevant to the issue under consideration since the spiral note book was found and seized from his possession during the course of search at his residence which was conducted on the strength of the warrant issued in the name of the assessee. The notebook contained notings in his handwriting with regard to impugned expenses. Upon perusal of sworn affidavits filed by the two persons and the statements made during cross-examination and re-examination, it could be noted that both the persons cited the reason for retraction as application of threat, coercion and force by the Investigating Officer while recording the statements and stated that they forcibly obtained their signatures on the typed statements whose contents were not known to them. However, there was no evidence to support such an allegation. None of the said persons furnished an alternative and credible explanation with regard to the contents of the seized material. A retraction could be considered to be legally valid only when it was established through evidence that the same was obtained through force, coercion, threat etc. which is supported by cogent reasons and evidences. In the present case, the requirement of a valid retraction was not made and therefore, the retraction so made by them could not be accepted.

24.6 Proceeding further, it was held by Ld. CIT(A) that Shri D Ajay Kumar could not be regarded as a third-party in relation to the assessee since he was working in the office of the assessee and his residence was searched u/s 132 on the strength of warrant issued in the name of the assessee. The material thus seized from his residence was, therefore, to be construed as the material seized during the course of the search conducted in the case of the assessee only. The said material

could not be treated as the material found and seized in the course of search conducted in the case of a third-party. However, the contention that there was no mention of assessee's name in the seized material was factually correct. Shri D Ajay Kumar denied having any knowledge of the source of the money for the expenditure noted in the seized spiral note book in his statements recorded during the search. It was also correct that the assessee was neither the head of the political party which organised the Koovathur MLA camp nor he was holding any administrative position in the party so as to infer that the expenditure for the said camp was incurred out of his sources. Since there was no evidence either in the seized material or in the statements given by Shri D Ajay Kumar to indicate that the assessee had incurred the expenditure towards Koovathur MLA camp, the impugned addition could not be made in the hands of the assessee as unexplained expenditure. Therefore, the same was deleted against which the revenue is in further appeal before us.

Our findings on this issue

25. From factual matrix, it could be ascertained that this addition has been made on the basis of notings made in the spiral notebooks which was found from the premises of Shri D Ajay Kumar. The notings contained details of certain expenditure. However, the source of the expenditure was nowhere discernible from those notings. It is factual finding by Ld. CIT(A) that there was no mention of assessee's name in the seized material. The same remain uncontroverted before us also. It could also be seen that Shri D Ajay Kumar, in recorded statements, has denied having any knowledge of the source of the money for the said expenditure as noted in the seized spiral note book. In such a case,

unless it was established that the stated expenditure was sourced from the assessee, the same could not be considered to be the unexplained expenditure by the assessee. In the absence of any such concrete evidence on record to support the allegation of Ld. AO, no such addition could have been made in the hands of the assessee. We order so. The adjudication of Ld. CIT(A) could not be faulted with. The corresponding grounds as raised by the revenue stand dismissed.

26. Addition of unexplained cash found during search

26.1 This addition was made for AY 2018-19. During search, cash of Rs.3.59 Lacs was found at the official residence of the assessee at Greenways Road, RA Puram, Chennai. The cash of Rs.3 Lacs was seized. In recorded statement, the assessee explained that the cash belonged to his proprietary concern M/s RBM. However, no evidence thereof could be produced by the assessee at the time of recording of statement. During assessment proceedings, the assessee reiterated that the cash was duly accounted for in the books of accounts of RBM in its return of income filed for AY 2018-19. In the subsequent reply dated 06.06.2019, the assessee stated that he had drawn Rs.3 lakhs in cash from RBM and kept the same at his residence. The attention was drawn to the financial statements of RBM for AY 2018-19. In support, a copy of day book of M/s RBM was furnished for the period from 01.04.2017 to 07.04.2017. The balance cash of Rs.0.59 Lacs was stated to be belonging to other family members. However, Ld. AO rejected the same for want of evidences and treated the same as undisclosed income of the assessee.

26.2 Another cash of Rs.21.49 Lacs was found during search at the residence of the assessee at Illupur, Pudukottai District. The cash to

the extent of Rs.12.69 Lacs was found in brown covers with the names of the candidates for jobs in Nutrition Meal program written on the covers. The Ld. AO stated that the interview call letters for the said candidates were also found in some cases which were also seized. The statement of Shri R Chinnathambi (assessee's father) who was residing at the said premises, was recorded u/s 132(4) during the search on 07.04.2017. In reply to Q.No.13, he stated that cash of Rs.12.96 Lacs was received from various persons for getting jobs for them. He stated that cash of Rs.6 to 7 lakhs belonging to outside persons was also kept at the residence for which he was unable to produce any details and supporting evidences. During assessment proceedings, the assessee explained that the cash of Rs.21.49 Lacs was duly accounted for by his father. In the subsequent reply dated 06.06.2019, it was explained that aforesaid cash belonged to his father and the same had been duly accounted by him. In return of income of the father for AY 2017-18, the cash balance as per books was shown for Rs.28.84 Lacs. In support, the copy of cash book of the father was furnished.

26.3 The Ld. AO noted that the opening cash balance as on 01.04.2017 was shown in the cash book for Rs.28.82 Lacs. There were receipts of Rs.3 Lacs and Rs.1.5 Lacs on 02.04.2017, Rs. 2 Lacs and Rs.1 Lacs on 04.04.2017 and Rs.1.5 Lacs & Rs.9 Lacs on 05.04.2017. The AO stated that no explanation was given for the said receipts in the cash book on the dates prior to the date of search and no bank book was furnished to corroborate the said entries. The AO also observed that an entry was made in the cash book on 07.04.2017 as "R. Chinnathambi Current account (Income tax seizure) - Rs.20 lakhs-Cr" and the closing balance as on 07.04.2017 was arrived at Rs.9.87 Lacs. As per the said

entries, the cash on the date of search ought to have been Rs.29.87 Lacs whereas the cash was found only for Rs.21.49 Lacs only. No explanation was furnished for shortfall of Rs.8.38 Lacs. The cash balance as per Balance Sheet as on 31.03.2017 was shown at Rs.28.84 Lacs in the return of income filed by Shri Chinnathambi on 30.10.2017 u/s 139 as well as in the return of income filed on 07.12.2017 in response to notice u/s 153A of the Act. The AO alleged that the availability of the cash found during the search was attempted to be explained by the above-mentioned receipt entries made in the cash book as the books of account were finalized and return was filed u/s 139 after the date of search. However, no other evidence was furnished to establish the availability of the cash-in-hand on the date of search. As against this, the incriminating material indicates that the amount of Rs.12.96 Lacs was received from various candidates for getting jobs in the Nutrition Meal program of the State Government. The Page Nos. 1-28 of seized loose sheets vide Annexure ANN/VB-CT/DN/LS/S contained brown covers in which the cash was found with names and addresses of the candidates mentioned on the covers and copies of the interview letters in some of the cases. The AO also stated that page Nos.318-322 of the said seizure annexure contained the names, addresses, mobile numbers and the amount received in respect of various candidates. The AO, therefore, concluded that the cash of Rs.12.96 Lacs as found in the brown covers during the search was to be treated as income earned by the assessee since the said requests for jobs in the Nutrition Meal Program were received in view of his political and official position. Regarding balance cash of Rs.8.53 Lacs, Ld. AO stated that Shri Chinnathambi could not furnish the details of sources of

the said cash during the search though he claimed that cash to the extent of Rs.6 to 7 Lacs belonged to outside persons. Moreover, Ld. AO observed that the said cash was also attempted to be explained as the cash available in the cash book of Shri Chinnathambi during the assessment proceedings which was merely an afterthought. Therefore, the explanation was found to be not satisfactory and entire cash of Rs.21.49 Lacs was treated as undisclosed income of the assessee. Finally, Ld. AO made addition of cash found for Rs.25.08 Lacs (Rs.3.59 Lacs + Rs.21.49 Lacs) for AY 2018-19. During first appeal, the assessee assailed the addition by way of elaborate written submissions.

26.4 The assessee's explanation for Rs.3.59 Lacs was accepted by Ld. CIT(A) by considering the fact that the assessee furnished copy of day book of M/s RBM for the period from 01.04.2017 to 07.04.2017. Upon perusal of the same, it was seen that the amount of Rs.3 Lacs was drawn by the assessee on 03.04.2017 from the available cash balance of M/s RBM. The capital account of the assessee was debited. Upon seizure of cash of Rs.3 Lacs, the capital account was debited on 07.04.2017. The necessary entries were also reported in the sundry debtors account. Therefore, the claim was factually correct. The remaining cash could be considered to be belonging to assessee's wife and minor daughters. Accordingly, the addition of Rs.3.59 Lacs was deleted.

26.5 Regarding cash balance of Rs.21.49 Lacs, it was contended that the residence at Iluppur belonged to his father Shri R Chinnathambi and that the cash found therein during the search could not be considered to be the cash belonging to the assessee. It was also pointed out that the said cash had already been added to the total income of his

father in the assessment order dated 30.12.2019 passed u/s 143(3) r.w.s. 153C in the case of his father for AY 2018-19 and it was, therefore, incorrect to make addition of the said amount once again in the hands of the assessee. The said cash could not be considered to be the cash pertaining to the assessee as there was no mention of his name in the seized material and it had not been stated by Shri R Chinnathambi during the course of the search that the cash belonged to the assessee. On the observation of Ld. AO that the cash of Rs.12.59 Lacs was found in brown covers along with the name and address of the candidates for a job in Nutrition Meal Program and the statement given by Shri R Chinnathambi during the search that the said amounts were received for getting a job, the assessee pointed out that the said statement dated 07.04.2017 had already been retracted by Shri Chinnathambi vide his letter dated 06.07.2018. It was stated that the letter dated 03.09.2018 filed by Shri Chinnathambi before Ld. AO clarified that the cash and brown covers were found separately and that the said cash of Rs.12.96 Lacs consisted of cash of Rs.1 Lacs belonging to him, cash of Rs.3 Lacs belonged to Mother Theresa Educational Charitable Trust (of which he was the chairman) and the cash of Rs.9 Lacs was given to him for safe custody by five persons whose names were mentioned in the said letter.

26.6 The Ld. CIT(A) observed that the fact that the residence at Illupur belonged to assessee's father was correct. In reply to Q.No.4 of statement u/s 132(4), Shri R Chinnathambi confirmed this fact. Therefore, the assessee could not be considered to be the owner of cash found therein unless evidence in that regard was found. On perusal of the seized material, it was noticed that there was no such evidence. Moreover, Shri R Chinnathambi did not state that cash found belonged

to the assessee. Further, the cash so found was treated as unexplained cash in the hands of assessee's father in assessment order dated 30.12.2019 for AY 2018-19. In the assessment order, it was stated that addition was made substantively in the hands of the assessee and protectively in the hands of Shri R Chinnathambi. For the aforesaid reasons, the addition of unaccounted cash was to be considered in the hands of Shri R Chinnathambi only on a substantive basis. The same could not be considered in the hands of the assessee and accordingly, the impugned addition was deleted against which the revenue is in further appeal before us.

Our findings on this issue

27. We find that the adjudication of Ld. CIT(A) is based on factual finding. On the issue of addition of cash found for Rs.3.59 Lacs, it could be seen that the amount of Rs.3 Lacs was withdrawn by the assessee from M/s RBM and these entries were duly reflected in the financial statements of M/s RBM. The same was also supported by the copy of day book of M/s RBM for the period from 01.04.2017 to 07.04.2017 as furnished by the assessee. The assessee withdrew cash of Rs.3 Lacs on 03.04.2017 and his capital account was debited. This claim was factually correct. The remaining sum is paltry sum which could be considered to be cash belonging to assessee's family members. Therefore, the addition, to that extent, has rightly been deleted by Ld. CIT(A).

28. The remaining cash of Rs.21.49 Lacs has been found from the residence belonging to assessee's father. The addition has been made on the basis of statement of assessee's father which stood retracted. Pertinently, this cash has already been added in the hands of assessee's father for AY 2018-19. In such a case, the cash so found

could not be considered to be the cash pertaining to the assessee since there is no evidence on record to support such a conclusion. Therefore, the substantive addition so made in the hands of the assessee has rightly been deleted. We concur the adjudication of Ld. CIT(A) on this issue.

29. Addition of unexplained cash mobilized for election expenditure

29.1 This addition was made for AY 2018-19. The same stem from incriminating material as found and seized from official residence of the assessee at Chennai which was nothing but a room allotted to the assessee in MLA hostel at Chennai. Some material was also seized from the business premises of Shri Nainar Mohammed and the residential premises of Shri J Srinivasan. The said material allegedly contained details of distribution of cash to the voters of RK Nagar State Assembly Constituency during the Bye-election which was scheduled to be held on 12.04.2017. The Page No.5 of the loose sheet bundle as seized vide annexure ANN/TS/LS/S from the room allotted to the assessee in MLA hostel contained a chart with columns having particulars of the name of the incharge, number of booths under the incharge, total no. of voters in the said booths, 85% of the said voters and the amount for distribution to the said 85% voters. The aggregate amount in respect of all the booths was shown to be Rs.89.65 Crores. The AO observed that the names mentioned therein as incharge persons included the names of several ministers of the State Government. The AO stated that the particulars similar to the particulars available in the said seized loose sheet were also found in some loose sheets seized at the official residence of the assessee vide ANN/MS/CV/LS/S. The Ld. AO also stated that Page

No.6 of the bundle as seized from the room allotted to the assessee in MLA Hostel was titled as "Expenses" and it contained 2 sets of entries under two names "Sadique" and "Nainar".

29.2 Shri J Sadique Batcha whose name was mentioned as 'Batcha' in the above-mentioned loose sheet was confronted with the said loose sheet during the course of the search at his residence on 07.04.2017. In response to Q.No.20 of the statement u/s 132(4) dated 07.04.2017, he stated that the loose sheet reflects the transactions which happened between himself and Shri A Saravanan, PA to the assessee. He stated that he used to meet Shri Saravanan two or three times in a month for his business purposes at the residence of the assessee. He stated that Shri Saravanan has given him cash aggregating to Rs.6.55 crores on the dates as mentioned in the loose sheet and the same had been returned to him in full on 01.04.2017.

29.3 The search was also conducted on the same day at the business premises of Shri Nainar Mohammed whose name was mentioned as 'Nainar' in the above-mentioned loose sheet. During search, cash of Rs.3.03 Crores was found out of which cash of Rs.2.94 Crores was seized. In reply to Q.N.9 of statement u/s 132(4), he stated that he used to meet Shri Saravanan two or three times in a month for business purposes at the residence of the assessee. He stated that Shri Saravanan gave him Rs.40 Lacs on 03.04.2017 and told him to put it in covers to the extent of Rs.5 Lacs in each cover. However, the entire amount was returned to him on the same day as Shri Saravanan called him back and asked him to return the money. He stated that when he met Shri Saravanan on 06.04.2017 at the residence of the assessee, Shri Saravanan handed over 3 bags stated to be containing cash of

Rs.2.95 Crores and asked him to pack it in denomination of Rs.25000/- in each cover and return it to him on 07.04.2017. He stated that the bags given by Shri Saravanan actually contained cash of Rs.2.94 Crores only on counting the same during the course of the search. Shri Nainar Mohammed was confronted with the loose sheet (page No.6) seized at the room allotted to the assessee in MLA hostel which mentioned his name along with certain amounts, during the course of his statement u/s 132(4) dated 07.04.2017. In his reply to Q.No.16, Shri Nainar Mohammed stated that he had no idea about the notings in the said loose sheet and he reiterated that he had only received Rs.40 Lacs on 03.04.2017 and Rs.2.95 Crores on 06.04.2017. However, Ld. AO pointed out that page No.19 of loose sheets found and seized from the business premises of Shri Nainar Mohammed vide annexure ANN/MKM/NM/LS/S contained entries which matched with the entries found with his name in the loose sheet No.6 seized from the room allotted to the assessee in MLA hostel. The Ld. AO also stated that some of the entries appearing with the name "Nainar" in the loose sheet (page No.6) seized from the room allotted to the assessee in MLA hostel were also found matching with the entries available in the pocket size notebook found and seized at the residence of Shri J Srinivasan (PA of the assessee) vide annexure ANN/RR/JS/B&D/S-2. The AO observed that the said entries have further corroborated that Shri Nainar Mohammed had received the amounts from Shri Saravanan, as mentioned in the loose sheet seized from the room allotted to the assessee in the MLA hostel. The Ld. AO further observed that the loose sheet No.62 seized vide annexure ANN/MS/CV/LS/F&S on 07.04.2017 from the official residence of the assessee also contained details of

amounts aggregating to Rs.25 Lacs along with the name "Nainar" and date 01.04.2017 written therein and that the said date and amount matched with the corresponding entry in the loose sheet No.6 seized from the room allotted to the assessee in MLA hostel found noted against the name Nainar. With regard to the entries in the pocket size notebook seized at the residence of Shri J Srinivasan, Sri. J. Srinivasan stated in his sworn statement dated 07.04.2017 that the same were written by Shri A Saravanan, PA to the assessee and that he had no idea of the contents. Further, the AO stated that loose sheet No.7 of ANN/TS/LS/S seized from the room allotted to the assessee in MLA hostel contained various entries under the heading "AbstractExpenses" aggregating to 217.20 and that the same included two major entries namely "RK Nagar cover (30.03.17)- 95.00' and "RK Nagar (HM) cover (28.03.17)- 33.00". Further, the AO observed that the loose sheet No.10 of ANN/RR/JS/LS/S seized from the residential premises of Shri J Srinivasan contained person-wise breakup of the amount of Rs.95.00 which was found on page no. 7 as seized from the room at MLA hostel mentioned above. With regard to the contents of the said page, Shri J Srinivasan stated in his sworn statement that the relevant notings were made by Shri Saravanan and the same was given to him for safe custody. The AO further stated that the sworn statement of Shri A Saravanan was recorded on 07.04.2017 during the course of search at his residence. With regard to the contents of loose sheet No. 7 of ANN/TS/LS/S seized from the room allotted to the assessee in MLA hostel, Shri Saravanan stated in his answer to Q.No.29 that the said sheet had been prepared by him and the details found therein aggregating to Rs.217.20 Lacs pertain to the day-to-day expenses made

in cash in RK Nagar constituency. He stated that the source of the said cash was the amount collected from various persons like contractors, middle men, suppliers, etc. through various departments in Health Ministry and the own funds of the assessee. Shri Saravanan stated in his response to Q.No.22 that the amount fixed by the party high command to the Health Minister (the assessee) for the RK Nagar bye-election was Rs.10 Crores and that he coordinated the mobilization of the said amount as per the instructions of the assessee. He stated that the break-up of amount of Rs.10 Crores mobilized by him was found at page Nos.2 to 4 of the material seized from the room allotted to the assessee at MLA hostel vide ANN/TN/LS/S. Shri Saravanan also stated in his answer to Q.No.8 that the money that was collected by him was given to Shri Sadique Batcha and Shri Nainar Mohammed for temporary custody and the cash was kept in covers by them as per the requirements and was handed over at the residence of the assessee. Subsequently, the covers were handed over to the responsible persons who were assigned as in-charge of cash distribution in RK Nagar constituency. As regards the role played by Shri A Saravanan as a PA to the assessee, AO referred to the replies given by Shri Saravanan to Q. Nos. 3 to 5 of his statement dated 07.04.2017. In his reply to Q.No.3 of the statement, Shri Saravanan stated that he came into contact with the assessee when he studied at Annamalai University during the years 1995-1999. He stated that he was doing the jobs assigned to him by the assessee from November 2013 onwards. In his reply to Q.No.4, he stated that he was a private PA to the Health Minister (assessee) and he was looking after the transfer and posting of all the cadres in the Department of Health of Tamil Nadu and processing of tenders with the help of other PAs to the assessee i.e.,

Shri Ramachandran, Shri Ajay, Shri Arul, Shri Srinivasan and Shri Abdullah. He stated that they collect money in the process of work assigned to them and would hand over the same either to the assessee or his representatives. In his reply to Q.No.5, Shri Saravanan stated that he was looking after overall supervision of all the PAs to the assessee. He also referred to the role of Shri Ramachandran, Shri Ajay, Shri Arul, Shri Srinivasan and Shri Abdullah. He further explained that all the said PAs would collect money and handover the cash to the Minister either through him or through the Minister's representatives. They used to update the daily accounts in loose sheets and inform the Minister.

29.4 Based on above seized material and relying upon the statements of Shri Saravanan, Shri J Srinivasan, Shri Sadique Batcha and Shri Nainar Mohammed with regard to the contents of the said seized material, Ld. AO drew an inference that the assessee had organised the collection and distribution of money for the RK Nagar Bye-election through his Private PA Shri A Saravanan. As per Ld. AO, Shri Saravanan looked after all the transfer and posting of various cadres in the Health and Family Welfare Department of Tamil Nadu Government as per the instructions of the assessee and he collected money from the beneficiaries of transfer and postings. The AO further observed that Shri Saravanan was being assisted by other PAs to the assessee such as Shri Ramachandran, Shri Ajay, Shri Arul, Shri J Srinivasan, Shri Abdullah and others for this purpose. The work of each PA was stated to be defined by the assessee himself. As per the statement given by Shri Saravanan, all the PAs would collect money from the fields assigned to them and would hand over the cash to the assessee through Shri Saravanan. Based on seized material containing, Ld. AO quantified the

amount of such mobilization / expenditure at Rs.15.46 Crores. The said amount was aggregate of Rs.6.55 crores and Rs.3.79 crores found noted on page No.6 of material seized from room allotted to the assessee in MLA hostel, Rs.2.95 Crores as noted in material seized from the premises of Shri Nainar Ahmed and Rs.2.17 crores found noted on page No.7 of material seized from the room allotted to the assessee in MLA hostel. Upon being show-caused, the assessee refuted the allegations of Ld. AO and stated that he was not connected with the expenditure in RK Nagar bye-election since he was neither a candidate in the said election nor he was holding any office in the conduct of elections. The assessee sought cross-examination of various witnesses such as Shri A Saravanan, Shri J Srinivasan, Shri Sadique Batcha and Shri Nainar Mohammed which was granted to the assessee. In cross-examination made by the representatives of the assessee on 11.11.2019, Shri A Saravanan stated that his sworn statement recorded on 07.04.2017 was against the true facts as he was forced to sign on a typed statement. He also stated that he was threatened and coerced to sign a typed statement. Since he was mentally stressed and exhausted, he was compelled to sign the typed statement. This statement was wrong, false and invalid and same could not be treated as his testimony. He clarified that he was not the PA of the Health Minister (assessee) and he did not have any authority to act as the PA to the assessee. In other words, the statement made by him on 07.04.2017 stood retracted. The Ld. AO re-examined him wherein he reiterated the stand taken during cross-examination. However, Ld. AO rejected the retraction on the ground that he could not produce any material evidence which warranted retraction of his sworn statement. The statement was recorded in the

presence of two independent witnesses. It was mentioned in Column 6 of the Panchanama that the Authorised Officer recorded the statement of Shri A Saravanan on solemn affirmation / oath and that no coercion, threat, inducement, promise or other influence was brought on the deponent. There was nothing on record to suggest that Shri A Saravanan was not in proper frame of mind or was under any threat, coercion or undue influence during the course of recording of statement. Therefore, the retraction was held to be invalid. The statement as recorded during search only would give correct picture since the deponent would be free to depose the actual facts known to him without being under compulsive influence of his masters. Subsequently, the deponent came under influence of concerned persons which led to retraction of statements given during the course of search. Therefore, the retraction was held to be mere afterthought. Finally, the amount of Rs.15.46 Crores was added as undisclosed income of the assessee with following specific observation: -

"The above transactions are in the nature of unexplained receipts undisclosed sources. Hence, in view of the above, in the interests of revenue, based on the documentary evidences seized during the course of search action u/s 132 of the Income Tax Act, 1961, the same are added in the hands of the assessee, subject to the outcome and finality of the investigation by the appropriate anti-corruption agencies."

Aggrieved, the assessee assailed the impugned addition during first appeal by way of elaborate written submissions and referred to cross-examination of these persons by the assessee's representative.

29.5 The Ld. CIT(A) noted the submissions of the assessee that he was neither the contesting candidate in the bye-election nor he was an office bearer of the political party contesting the election and there was no reason for him to expand any sum for the election as alleged by Ld.

AO. However, the same was rejected on the ground that the material as seized from the room allotted to the assessee in MLA Hostel indicate that several persons (other than the contesting candidates) were given the responsibility to expend money for the bye-election. Seven persons were assigned certain number of booths in the constituency where the bye-election was being held and the amount of expenditure to be incurred with regard to the voters pertaining to the said booths were shown against the names of said persons along with the names of voters. Having regard to the contents of the loose sheets, it was evident that the expenditure for the bye-election was being incurred by several persons including the assessee. Another argument was that the aforesaid material was not seized from the premises or possession of the assessee. The assessee also questioned the origin and authenticity of material seized from the room allotted at MLA Hostel on the ground that the said room was used by many persons. However, Ld. CIT(A) noted that the material was seized from four premises including the official residence of the assessee. The two out of the four premises from where the material was seized represented the premises of the assessee himself. The residential premises of Shri J. Srinivasan would also not represent third-party premises since that person was working in the camp officer of the assessee and the said premises was searched on the strength of warrant issued in the name of the assessee. Similarly, the business premises of Shri Nainar Mohammed could also not be regarded as third-party premises since the said premises was also searched on the strength of warrant issued in the name of the assessee. The entire material as relied upon by Ld. AO was seized from various premises during the course of search conducted in the case of the

assessee and no part of such material was seized during the course of search conducted in the case of third party. In fact, the main evidence regarding the impugned expenditure was seized from the room allotted in the name of the assessee in MLA Hostel. The Page No.5 of the seized loose sheets contained various details. Similar details were found contained in material seized from official residence of the assessee. The notings found in the material seized from the official residence of the assessee were matching with the notings found in the material seized from the room allotted to the assessee in MLA Hostel. The persons visiting the room include Shri Mohammed Abdullah and Shri R Venkatesan who were working in the office of the assessee. Therefore, it could not be said that the seized material had no nexus with the assessee particularly when the name of the assessee appeared in some of the seized loose sheets and contents of some of the seized loose sheets were matching with the contents of the material seized at the official residence of the assessee. Therefore, the arguments thus raised by the assessee were dismissed.

29.6 The assessee also questioned the evidentiary value of the recorded statements of third-parties. However, Ld. CIT(A) concurred that the retraction was without any evidence. None of the person furnished any alternative and credible explanation with regard to the contents of the seized material. This was coupled with the fact that the seized material had evidences with regard to cash mobilized and expanded in connection with the RK Nagar bye-election. It was clearly evident that the details found in the material seized from the room in MLA Hostel was corroborated by the details found in the materials seized from the official residence of the assessee, the residential premises of Shri J Srinivasan

and the business premises of Shri Nainar Mohammed. In view of the corroborative nature of the seized material as well as the corroborative nature of the sworn statements of four persons, the conclusion as arrived by Ld. AO could not be defaulted with except for an amount of Rs.294.88 Lacs. Shri Nainar Mohammed stated that the said cash was given to him by Shri A. Saravanan, however, the said amount was not found mentioned in the material seized from the premises of the room allotted to the assessee in MLA Hostel vide Page Nos.1 to 9 of Annexure ANN/TS/LS/S wherein the other amounts given to Shri Sadiq Batcha and Shri Nainar Mohammed was found mentioned. The said amount was also not found noted in the material seized in any of the other premises. Thus, there was no seized material which contains any reference to the said cash of Rs.294.88 Lacs found with Shri Nainar Mohammed during the search. The same was also corroborated by the statement of Shri A. Saravanan who denied to have given the said cash to Shri Nainar Mohammed in his statement recorded during search on 07.04.2017 though he confirmed the other payments. Shri Nainar Mohammed also stated during cross-examination that the said cash pertained to his business only. Therefore, the addition to that extent was deleted whereas the remaining addition was confirmed. Aggrieved, the assessee as well as revenue is in further appeal before us.

Our findings on this issue

30. From the facts, it emerges that the impugned addition has been made on the basis of incriminating material as found and seized from a room allotted to the assessee in MLA hostel at Chennai. Some other material has been found at various other places which include the business premises of Shri Nainar Mohammed and the residential

premises of Shri J Srinivasan. The said material allegedly contained details of distribution of cash to the voters during bye-elections. The Page No.5 of the loose sheet bundle as seized vide annexure ANN/TS/LS/S from the room allotted to the assessee in MLA hostel contained a chart with columns having particulars of the name of the incharge, number of booths under the incharge, total no. of voters in the said booths, 85% of the said voters and the amount for distribution to the said 85% voters. We have gone through the same. Some particulars are found recorded in some loose sheets seized at the official residence of the assessee vide ANN/MS/CV/LS/S. The details of expenses noted at Page No.6 of the bundle as seized from the room allotted to the assessee in MLA Hostel was titled as "Expenses" and it contained 2 sets of entries under two names "Sadique" and "Nainar". When Shri Sadique Batcha was confronted, he stated that the loose sheet reflects the transactions which happened between himself and Shri A Saravanan, PA to the assessee. He also narrated the fact of exchange of cash between him and Shri A Saravanan. The business premise of Shri Nainar Mohammed was also searched on same day and cash of Rs.2.94 Crores was seized. In sworn statement, he confirmed exchange of cash between him and Shri Saravanan. The Ld. AO has noted that the page No.19 of loose sheets found and seized from the business premises of Shri Nainar Mohammed vide annexure ANN/MKM/NM/LS/S contained certain entries which matched with the entries found noted at loose sheet No.6 seized from the room allotted to the assessee in MLA hostel. The entries as found noted in the loose sheet as seized from the MLA Hostel was deciphered by Ld. AO by relying upon the statements of Shri Saravanan, Shri J Srinivasan, Shri Sadique Batcha and Shri Nainar

Mohammed. On the basis of the same, Ld. AO drew an inference that the assessee had organized the collection and distribution of cash for by-elections through his private PA Shri A. Saravanan. However, the assessee refuted any such allegations and sought cross-examination of all these persons which was provided to the assessee. During cross-examination, all these persons retracted from their earlier statements. If these retractions are considered, the whole case of Ld. AO would fall since there is no other corroborative evidence on record to support the allegation of Ld. AO. Under such circumstances, the statements of these persons would lose veracity and the same, on standalone basis, could not be relied upon unless there were other concrete evidences to support the same.

31. It could also be seen that Ld. AO made this addition in the hands of the assessee subject to the outcome and finality of the investigation by the appropriate anti-corruption agencies. The Ld. AR stated that the department wrote a letter to Director, DVAC after the search. The DVAC conducted detailed enquiry and finally found no merits in the request of the department. It was specifically found that there was no element of criminality in any manner whatsoever on the part of the assessee and the assessee was not linked to the seized loose sheets in any manner. The copy of the letter was placed before lower authorities and the same has been placed before us. This being the case, the impugned addition would have no legs to stand.

It is also pertinent to note that the Hon'ble Madras High Court has also quashed the FIR which has been registered by the State Police on the complaint of ECI vide order dated 13.03.2018 passed in CrI. OP No. 26303 of 2017 (Kept at Pages 36 - 40 of Volume 4). Thus, the caveat

expressed in the assessment order has been closed because of the detailed enquiry conducted by DVAC as well as the order of the Hon'ble Madras High Court quashing the FIR on the basis of the complaint of ECI. The Ld. CIT(A) failed to take note of these facts. The statements of all the persons which form the very basis of impugned addition stood retracted and all these persons were subjected to detailed cross examination by the Appellant and re-examination by AO wherein the retraction was reiterated. Under these circumstances, the impugned additions could not be sustained in the hands of the assessee.

32. Finally, considering the facts and circumstances of the case, the impugned additions as made by Ld. AO are liable to be deleted. We order so. The corresponding grounds raised in revenue's appeal stand dismissed whereas corresponding grounds raised in assessee's appeal stand allowed.

33. Additional Legal Grounds before Ld. CIT(A)

33.1 For AYs 2011-12 to 2018-19, the assessee raised a legal issue and contended that in the absence of any incriminating material, no additions could have been made in unabated assessment. Reliance was placed on various judicial decisions to support this contention. The Ld. CIT(A) noted that the assessee was searched on 07-04-2017. For AY 2016-17, the time available for issuance of notice u/s 143(2) had not expired. Similarly, for AY 2017-18, the due date for filing of return of income had not expired. These two years were case of abated assessment years. The assessment for AY 2018-19 was regular assessment u/s 143(3). Accordingly, the additional legal grounds for AYs 2016-17 to 2018-19 were held to be not sustainable.

33.2 For AYs 2011-12, 2012-13 & 2013-14, regular assessments were already framed u/s 143(3) on 21.03.2014, 17.03.2015 and 05.08.2015 respectively. Therefore, these were unabated / concluded assessment years. For AYs 2014-16 and 2015-16, no notices were issued u/s 143(2) and the time limit to issue such a notice had already been expired before the date of search. Therefore, all these years represent unabated assessment years. It was noted that disallowance of quarry expenses for AYs 2011-12 to 2015-16 and the addition of unaccounted sale of blue metal as made by Ld. AO for AYs 2011-12, 2012-13 and 2015-16 did not emanate from any incriminating material as seized during the course of search. No such material was referred to by Ld. AO while making these additions / disallowances. The additions made for AY 2015-16 towards undisclosed receipts from M/s SRS Mining and M/s V Srinivasa Rao Polisetty & ors. were based on material seized during the course of search in the case of third-party and the said additions emanated from seized material only. The Ld. CIT(A) relied on the decision of Hon'ble High Court of Bombay in the case of **CIT vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (374 ITR 645)** to conclude that in the case of unabated assessment, the assessment u/s 153A could be made only on the basis of incriminating material found during the course of search. Therefore, the disallowance of quarry expenses for AYs 2011-12 to 2015-16 and addition of unaccounted sale of blue metal for AYs 2011-12, 2012-13 and 2015-16 were held to be legally unsustainable. Aggrieved as aforesaid, the revenue is in further appeal before us.

Our findings on this issue

34. It is evident that the assessee was subjected to search on 07.04.2017. The six assessment years preceding to assessment year relevant to previous year in which the search was conducted would be AYs 2011-12 to 2017-18. For AY 2016-17, the time available for issuance of notice u/s 143(2) had not expired. For AY 2017-18, the due date for filing of return of income had not expired. Thus, these two years were case of abated assessment years. The assessment for AY 2018-19 was regular assessment u/s 143(3). Therefore, the legal grounds as raised by the assessee would not apply to AYs 2016-17 to 2018-19. However, for AYs 2011-12 to 2013-14, regular assessments had already been framed u/s 143(3) and these were unabated / concluded assessment years. For AYs 2014-16 and 2015-16, no notices were issued u/s 143(2) and the time limit to issue such a notice had already been expired before the date of search. Therefore, all these years represent unabated assessment years. In such a case, the additions which could have been made for all these years has to be strictly based on incriminating material as found during the course of search. It could be seen that the disallowance of quarry expenses for AYs 2011-12 to 2015-16 and the addition of unaccounted sale of blue metal for AYs 2011-12, 2012-13 and 2015-16 did not emanate from any incriminating material as seized during the course of search. No such material was referred to by Ld. AO while making these additions / disallowances. Therefore, these two additions / disallowances are liable to be deleted in *toto* on this legal ground. This is as per the recent landmark decision of Hon'ble Supreme Court in the case of **Pr. CIT vs. Abhisar Buildwell Pvt. Ltd. (149 Taxmann.com 399)**. The Hon'ble Court, considering all

the earlier decisions holding the field, held as under: -

14. In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found / unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

Approving the decision of Hon'ble Delhi High Court in the case of **Kabul Chawal (380 ITR 573)** as well as the decision of Hon'ble Gujarat High Court in **Saumya Construction (P.) Ltd. (387 ITR 529)**, it was held that in respect of completed assessments / unabated assessments, no addition could be made by Assessing Officer in the absence of any incriminating material found during course of search under section 132 or requisition made under section 132A. Similar is the decision of Hon'ble Bombay High Court in the case of **CIT vs. Continental Warehousing Corporation [2015; 374 ITR 645]** which has been followed in subsequent decision in **CIT V/s Gurinder Singh Bawa (79 Taxmann.com 398 05/10/2015)** which deals with a situation wherein the original return of income was processed u/s 143(1). The present case before us is on similar fact. It was held by Hon'ble Court that in respect of non-abated assessment, the additions are to be strictly based on the

basis of books of account or other documents not produced in the course of original assessment but found in the course of search and undisclosed income or undisclosed property discovered during search.

35. We find that similar is the view of Hon'ble Delhi High Court in **Pr. CIT vs. Meeta Gutgutia (82 Taxmann.com 287)** which has primarily followed the decision of **Kabul Chawla (supra)**. We also find that Special Leave Petition (SLP) filed by the revenue against this decision has already been dismissed by Hon'ble Supreme Court on 02.07.2018. The ratio of all these decisions would squarely apply wherein it was held that concluded assessment could not be disturbed in search proceedings u/s 153A and the additions have necessarily to be based on incriminating material found during the course of search. Considering the same, we concur with the adjudication of Ld. CIT(A).

36. Other legal grounds before Ld. CIT(A)

36.1 The assessee raised another legal issue and submitted that in the absence of detection of unrecorded assets, no addition could be made for AYs 2011-12 to 2018-19. This ground was dismissed on the ground that the 4th proviso was applicable only in respect of assessment years which fall beyond six assessment years immediately preceding the assessment years relevant to previous year in which search was initiated and not beyond ten years. In the case of the assessee, the only AY which falls beyond the period of six years was AY 2011-12 only. Therefore, this ground was rejected for AYs 2012-13 to 2018-19.

36.2 For AY 2011-12, Ld. CIT(A), after considering the statutory provisions of Sec.153A, observed that the power to issue notice u/s 153A was automatically vested with Ld. AO in the six assessment years

immediately preceding the assessment years relevant to previous year in which search was conducted and there was no other condition for issue of notice. However, to travel beyond six years, the conditions as laid down in fourth proviso to Sec. 153A(1) was to be fulfilled. The same was inserted in the Act w.e.f. 01.04.2017 by Finance Act, 2017. One of the conditions was that AO should have been in possession of books of account or other documents / evidence which reveal that the income represented in the form of asset has escaped assessment and such escaped assessment amounts to Rs.50 Lacs or more. The same was also clear from CBDT Circular No.2/2018 dated 15.02.2018. The Ld. CIT(A) then perused the satisfaction note of Ld. AO for AY 2011-12 and noted that this satisfaction was duly arrived at by Ld. AO. Based on information available with Ld. AO at the time of recording of satisfaction note including the inspection reports of the DVO, AO had bona-fide and prima facie belief that the assessee had undisclosed asset by way of undisclosed stock of rough stone and gravel for value exceeding Rs.50 Lacs during previous year relevant to AY 2011-12. Since the mandatory condition was fulfilled, the legal ground for this year was also rejected.

36.3 In year another legal ground, the assessee challenged assumption of jurisdiction u/s 153C for AYs 2015-16 to 2017-18 having regard to material seized during the course of search in the case of M/s SRS Mining and M/s V. Srinivasa Rao Polisetty and others. Since, the related additions, on merits were already deleted, the legal grounds thus raised by the assessee were treated as infructuous and academic in nature.

36.4 Lastly, Ld. CIT(A) made enhancement of income for AYs

2017-18 and 2018-19. The same stem from the fact that the assessee filed a settlement application before ITSC on 30.12.2019 wherein he offered additional income of Rs.1.50 Crores for these two years towards the estimated value of stock of fine dust waste generated out of crushing of rough stones into blue metal. The said application was rejected by ITSC on 09.01.2020. Subsequent applications were also rejected on 24.12.2020 and 27.09.2021. During appellate proceedings, the assessee prayed for considering the same. Accepting the proposal of the assessee, Ld. CIT(A) enhanced the income by Rs.75 Lacs each for AYs 2017-18 and 2018-19.

Our findings on legal grounds and enhancement

37. We find that the legal grounds raised by the assessee that in the absence of detection of unrecorded assets, no addition could be made for AYs 2011-12 to 2018-19, has correctly been dealt with by Ld. CIT(A). On the facts of the present case, the 4th proviso would apply only for AY 2011-12 and not for subsequent years. For AY 2011-12, Ld. AO arrived at due satisfaction as required under law. The same was based on inspection reports of the DVO and Ld. AO formed bona-fide and prima facie belief that the assessee had undisclosed asset by way of undisclosed stock of rough stone and gravel for value exceeding Rs.50 Lacs during previous year relevant to AY 2011-12. This mandatory condition has been fulfilled in the present case. The adjudication of legal grounds on assumption of jurisdiction u/s 153C for AYs 2015-16 to 2017-18 do not require our indulgence since we have confirmed the stand of Ld. CIT(A) on merits. The enhancement has been made as per assessee's pleadings only. The grounds thus urged in respective appeals stand disposed-off accordingly.

38. Additional Legal Grounds as raised by the assessee

38.1 For 2018-19, the assessee has raised additional grounds which read as under: -

1. *The files of assessee were centralized to DCIT, Central Circle, Chennai vide order dated 16.10.2019, which has been passed u/s.127 of the Act does not give any reasons as to why files were centralized. The non-furnishing of reasons for the order passed u/s.127(1) is serious infirmity and therefore, order passed by the AO is liable to be quashed.*

2. *The assessee submitted that approval order u/s. 153D has been passed without computer generated DIN. In this regard, CBDT circular number 19 of 2019 clearly casts and obligation on the every income tax authority to allot a computer generation number (DIN) in respect of every communication by way of notice, order or any correspondence issued by him and such number must be quoted thereon. Since there is no DIN in approval order, consequently there is a clear violation of CBDT Circular No.19 of 2019. The circular further reads that any such orders without DIN will be treated as invalid and nullity in the eyes of law.*

38.2 The Ld. AR filed written submissions and contended that vide order dated 16.10.2019, the files of the assessee were centralized to DCIT, Central Circle, Chennai. However, the order passed u/s 127 do not give any reasons for such centralization. The furnishing of reasons for such orders is a sine qua non which has not been done in the instant case. Reliance has been placed on the decision of Hon'ble Supreme Court in the case of **Ajantha Industries v. Central Board of Direct Taxes 1976 SCR (2) 884** holding that the requirement of recording reasons u/s 127(1) is mandatory under the law and non-communication thereof would not be saved by showing that the reasons exist in the file although not communicated to the assessee. Since this requirement was not fulfilled in the present case, the order passed by AO who derived jurisdiction on the basis of an illegal order passed u/s 127(1) of the Act is liable to be quashed. It has further been stated that vide communication dated 27.12.2019, AO had sent the files for the approval of the Joint commissioner of Income Tax (JCIT) for AYs 2011-12, 2012-13 & 2013-

14 as per the requirement of Sec.153D of the Act. On 27.12.2019, AO had sent two communications. Firstly, for AY 2011-12 and for AY 2012-13 to 2014-15. The Joint commissioner had responded on 27.12.2019, granting approval for AY 2012-13 to 2014-15 on the same day. It is unfathomable as to how voluminous records running into thousands of pages have been approved by the JCIT on the very single day which clearly reveals non application of mind. It is a settled law that approval u/s 153D is not an empty formality.

38.3 Similarly, on 25.09.2021, approval was sought by AO from Additional commissioner of Income Tax for AY 2011-12, 2015-16 to 2018-2019 and the said approval was granted on 27.09.2021. It is interesting to note that 25.09.2021 was a Saturday and approval was granted on 27.09.2021 which was a Monday. Here also, it is absolutely unfathomable as to how voluminous records amounting to thousands of pages have been approved within one working day. It clearly reflects non-application of mind on the part of approving authority.

38.4 For all these submissions, Ld. AR has referred to various judicial decisions which include the decision of Hon'ble Gujarat High Court in the case of PCIT v. Sunrise Finlease Pvt Ltd (2018) 252 Taxman 407 holding that lack of approval u/s 153D would invalidate the assessment order and the same is not a curable defect. Similarly, in the case of PCIT v. Sapna Gupta (2023) 147 Taxmann.com 288, Hon'ble High Court of Allahabad held that the approval could be said to have been granted only after due application of mind on the subject matter and on satisfaction of legal and procedural requirements. It was further stated that approval could not be a mere formality and the approving authority has to act in a judicious manner. The Hon'ble High Court has

also held that specific application of mind has to be there with the approving authority for granting approval for each assessment year. In the decision by Hon'ble Orissa High Court in the case of ACIT v. Sirajuddeen SLP (CIVIL) Diary Nos. 46858 of 2023, the department filed an SLP before the Hon'ble Supreme Court of India and the same came to be dismissed. The Hon'ble High Court relied upon the manual of office procedure issued by CBDT in exercise of provision u/s 109 of the Act, wherein it is provided that a draft order must be submitted to the approving authority at least one month before the time barring date. Due opportunity of hearing must be given to the assessee by the approving authority. The High Court further held that non-compliance of Sec.153D would vitiate the entire assessment. The High Court further held that the approval must at least indicate what is the thought process involved and at least some reasons must be given in the approval order which was woefully lacking.

38.5 In yet another legal ground, it has been contended that the approval order u/s. 153D has been passed without a computer-generated DIN. The Ld. AR referred to CBDT Circular Number 19 of 2019 which clearly casts an obligation on every income tax authority to allot a computer generation number (DIN) in respect of every communication by way of notice, order or any correspondence issued by him and such number must be quoted thereon. A bare perusal of the approval order would indicate that there is no DIN and consequently, there is a clear violation of CBDT Circular No.19 of 2019. The circular further reads that any such orders without DIN will be treated as invalid and nullity in the eyes of law. The Ld. AR referred to the decisions of Delhi Tribunal in the case of Finesse international Design v. DCIT (2023)

157 Taxmann.com 271 wherein Tribunal quashed an assessment order since there was no DIN quoted on the approval granted u/s 153D. In the case of Ankit Jain v DCIT (2023) 155 Taxmann.com, the assessment order was quashed since it did not have a DIN. In Dilip Kothari v. PCIT (2023) 146 Taxmann.com 442, the orders passed u/s 263 was declared invalid because the same did not contain DIN.

Our Adjudication of additional legal grounds as raised by the assessee

39. So far as the challenge to order u/s 127, we find that the same is an administrative order to facilitate better management of the assessments in certain cases. Such an exercise could not be questioned before Tribunal and such orders are not appealable before Tribunal. Therefore, this additional legal ground stand rejected.

40. The Ld. AR has stated that the approval was given within a short span of time and therefore, it was to be held that the same was in mechanical manner. It could be noted that Ld. AO has send proposal and sought requisite approval from appropriate authorities along with various documents to justify its proposal. In our considered opinion, the approval has to be given by the authority after having prima-facie satisfaction only. It was not necessary that detailed findings were to be given on each of the documents as submitted by Ld. AO along with the proposal. Once the approval has been given following due procedure of law, the same has to be considered as a valid approval only. Therefore, this legal ground could not be accepted.

41. On the issue of DIN, the undisputed position that emerges is that this matter is already *sub-judice* before Hon'ble Supreme Court and it has been directed therein that the relevant case laws of Hon'ble High Courts holding the field would not be cited as precedent. Therefore, at this stage of proceedings, we refrain from delving into the same. The legal grounds thus raised by the assessee are kept open for appropriate adjudication in the light of final adjudication by Hon'ble Apex Court.

Conclusion

42. In AYs 2011-12 & 2012-13, the revenue has raised the issue of quarry expenses and unaccounted sales. In AYs 2013-14 & 2014-15, the only issue in revenue's appeal is quarry expenses. In AY 2015-16, the revenue has raised the issue of quarry expenses, unaccounted sales and additions of undisclosed receipts. In AY 2016-17, the revenue has raised the issue of quarry expenses and additions of undisclosed receipts. In AY 2017-18, the revenue has raised the issue of quarry expenses, additions of undisclosed receipts, undisclosed closing stock and undisclosed expenses. In AY 2018-19, the revenue has raised the issue of quarry expenses, unexplained cash found and alleged unexplained cash mobilized by the assessee. All these issues have appropriately been dealt with by us at appropriate places. All the appeals of the revenue stand dismissed.

43. In AY 2016-17 & 2017-18, the assessee has raised the issue of quarry expenses besides legal grounds. Both these appeals stand dismissed. In AY 2018-19, the assessee has raised the issue of quarry expenses besides legal ground. The same stand rejected. Another issue is qua unexplained cash mobilized by the assessee which stand allowed.

44. In the result, ITA Nos.695 to 702/Chny/2023 stands dismissed. ITA Nos.589 & 590/Chny/23 stand dismissed. ITA No. 591/Chny/2023 stand partly allowed.

Order pronounced on 28th February, 2025

Sd/-
(MANU KUMAR GIRI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :28th February, 2025
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai/Madurai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF